

**2014**  
**CUMULATIVE SUPPLEMENT**  
**TO**  
**MISSISSIPPI CODE**  
**1972 ANNOTATED**

**Issued September 2014**

**CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI  
ENACTED THROUGH THE 2014 REGULAR SESSION  
AND 1ST AND 2ND EXTRAORDINARY SESSIONS**

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**By the Editorial Staff of the Publisher**



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## **User's Guide**

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the Mississippi Code of 1972 Annotated, a User's Guide has been included in the main volume. This guide contains comments and information on the many features found within the Code intended to increase the usefulness of the Code to the user.



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## **PUBLISHER'S FOREWORD**

### **Statutes**

The 2014 Supplement to the Mississippi Code of 1972 Annotated reflects the statute law of Mississippi as amended by the Mississippi Legislature through the end of the 2014 Regular Session and 1st and 2nd Extraordinary Sessions.

### **Annotations**

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

- Southern Reporter, 3rd Series
- United States Supreme Court Reports
- Supreme Court Reporter
- United States Supreme Court Reports, Lawyers' Edition, 2nd Series
- Federal Reporter, 3rd Series
- Federal Supplement, 2nd Series
- Federal Rules Decisions
- Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

- American Law Reports, 6th Series
- American Law Reports, Federal 2nd
- Mississippi College Law Review
- Mississippi Law Journal

Finally, published opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

### **Amendment Notes**

Amendment notes detail how the new legislation affects existing sections.

### **Editor's Notes**

Editor's notes summarize subject matter and legislative history of repealed sections, provide information as to portions of legislative acts that have not been codified, or explain other pertinent information.

## **PUBLISHER'S FOREWORD**

### **Joint Legislative Committee Notes**

Joint Legislative Committee notes explain codification decisions and corrections of Code errors made by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation.

### **Tables**

The Statutory Tables volume adds tables showing disposition of legislative acts through the 2014 Regular Session and 1st and 2nd Extraordinary Sessions.

### **Index**

The comprehensive Index to the Mississippi Code of 1972 Annotated is replaced annually, and we welcome customer suggestions. The foreword to the Index explains our indexing principles, suggests guidelines for successful index research, and provides methods for contacting indexers.

### **Acknowledgements**

The publisher wishes to acknowledge the cooperation and assistance rendered by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation, as well as the offices of the Attorney General and Secretary of State, in the preparation of this supplement.

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September 2014

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# **SCHEDULE OF NEW SECTIONS**

Added in this Supplement

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# MISSISSIPPI CODE 1972

ANNOTATED

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#### SUBARTICLE B.

#### FILING DOCUMENTS.

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#### § 79-4-1.22. Filing service and copying fees; discounts; expedited filing service.

(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to him for filing:

Document	Fee
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(1) Articles of incorporation .....	\$ 50.00
(2) [Reserved]	
(3) Application for reserved name .....	25.00
(4) Notice of transfer or cancellation of reserved name .....	25.00
(5) [Reserved]	
(6) [Reserved]	
(7) [Reserved]	
(8) [Reserved]	
(9) [Reserved]	
(10) Amendment of articles of Incorporation .....	50.00
(11) Restatement of articles of incorporation .....	50.00
with amendment of articles .....	50.00
(12) Articles of merger or share exchange .....	50.00
(13) Articles of dissolution .....	25.00
(14) Articles of revocation of dissolution .....	25.00
(15) Certificate of administrative dissolution .....	No fee
(16) Application for reinstatement following administrative dissolution .....	50.00
(17) Certificate of reinstatement .....	No fee
(18) Certificate of judicial dissolution .....	No fee
(19) Application for certificate of authority .....	500.00
(20) Application for amended certificate of authority .....	50.00
(21) Application for certificate of withdrawal .....	25.00
(22) Certificate of revocation of authority to transact business .....	No fee
(23) Application for reinstatement following administrative revocation .....	100.00
(24) Certificate of reinstatement .....	No fee
(25) Annual report .....	25.00
(26) Articles of correction .....	50.00
(27) Application for certificate of existence or authorization .....	25.00
(28) Any other document required or permitted to be filed by Section 79-4-1.01 et seq. ....	25.00
(b) The Secretary of State shall collect a fee of Twenty-five Dollars (\$25.00) each time process is served on him under Section 79-4-1.01 et seq. The party to a proceeding causing service of process is entitled to recover this fee as costs if he prevails in the proceeding.	
(c) The Secretary of State shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:	
(1) One Dollar (\$1.00) a page for copying; and	
(2) Ten Dollars (\$10.00) for the certificate.	
(d) The Secretary of State may collect a filing fee greater than the fee set out herein, not to exceed the actual costs of processing the filing, if the form for filing as prescribed by the Secretary of State has not been used.	
(e) The Secretary of State may promulgate rules to:	

(1) Reduce the filing fees prescribed in this section or provide for discounts of fees to encourage online filing of documents or for other reasons as determined by the Secretary of State; and

(2) Provide for documents to be filed and accepted on an expedited basis upon the request of the applicant. The Secretary of State may promulgate rules to provide for an additional reasonable filing fee not to exceed Twenty-five Dollars (\$25.00) to be paid by the applicant and collected by the Secretary of State for the expedited filing services.

**SOURCES:** Laws, 1987, ch. 486, § 1.22; Laws, 1991, ch. 509, § 6; Laws, 1994, ch. 536, § 1; Laws, 2009, ch. 530, § 1; Laws, 2010, ch. 375, § 1; Laws, 2012, ch. 382, § 21; Laws, 2012, ch. 481, § 1; Laws, 2014, ch. 468, § 5, eff from and after July 1, 2014.

**Amendment Notes —** The 2014 amendment, in (2), substituted “[Reserved]” for “Application for use of indistinguishable name ... 25.00”; in (5), substituted “[Reserved]” for “Application for registered name ... 50.00”; and in (6), substituted “[Reserved]” for “Application for renewal of registered name ... 50.00.”

#### ARTICLE 4.

##### NAME.

SEC.

79-4-4.02. Reserved name.

79-4-4.03. Repealed.

### § 79-4-4.02. Reserved name.

(a) A person may reserve the exclusive use of a legal corporate name that complies with Section 79-4-4.01, including a fictitious name for a foreign corporation whose corporate name is not available, by delivering an application to the Secretary of State for filing. However, no person or corporation may reserve the name “In God We Trust” which name shall be reserved to the people of the State of Mississippi, as a symbol thereof. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the Secretary of State finds that the corporate name applied for is available, the Secretary of State shall reserve the name for the applicant’s exclusive use for a one-hundred-eighty-day period. The one-hundred-eighty-day period may be renewed once by the applicant by filing a renewal application within thirty (30) days before the expiration of the initial one-hundred-eighty-day period.

(b) The owner of a reserved corporate name may transfer the reservation to another person by delivering to the Secretary of State a signed notice of the transfer that states the name and address of the transferee.

(c) The reservation of a specified name may be cancelled by delivering to the Secretary of State a notice of cancellation, specifying the name of the reservation to be cancelled and the name and address of the owner or transferee.

(d) Unless the Secretary of State finds that any application, notice of transfer, or notice of cancellation filed with the Secretary of State as required



by this section does not conform to law, upon receipt of all filing fees required by law the Secretary of State shall prepare and return to the person who filed the instrument a copy of the filed instrument with a notation thereon of the action taken by the Secretary of State.

(e) A fee as set forth in Section 79-4-1.22 of this chapter shall be paid at the time of the reservation of any name and at the time of the filing of a notice of the transfer or cancellation of any such reservation.

**SOURCES:** Laws, 1987, ch. 486, § 4.02; Laws, 2012, ch. 481, § 7; Laws, 2014, ch. 468, § 1, eff from and after July 1, 2014.

**Amendment Notes** — The 2014 amendment, in (a), inserted “legal” following “the exclusive use of a” and “that complies with Section 79-4-4.01” following “corporate name” in the first sentence; added the second and last sentences; substituted “the Secretary of State” for “he” and deleted “nonrenewable” following “applicant’s exclusive use for a” in the third sentence; in (c), deleted “the Office of” following “cancelled by delivering to”; and in (e), deleted “(4)” near the beginning following “as set forth in Section 79-4-1.22.”

§ 79-4-4.03. Repealed.

Repealed by Laws 2014, ch. 468, § 9, effective from and after July 1, 2014.

§ 79-4-4.03. [Laws, 1987, ch. 486, § 4.03, eff from and after January 1, 1988.]

**Editor’s Note** — Former § 79-4-4.03 provided for the registration of corporate names.

ARTICLE 10.

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## SUBARTICLE A.

## RIGHT TO APPRAISAL AND PAYMENT FOR SHARES.

SEC.

79-4-13.02. Right to appraisal.

**§ 79-4-13.02. Right to appraisal.****[Until January 1, 2015, this section shall read as follows:]**

(a) A shareholder is entitled to appraisal rights, and to obtain payment of the fair value of that shareholder's shares, in the event of any of the following corporate actions:

(1) Consummation of a merger to which the corporation is a party (i) if shareholder approval is required for the merger by Section 79-4-11.04 and the shareholder is entitled to vote on the merger, except that appraisal rights shall not be available to any shareholder of the corporation with respect to shares of any class or series that remain outstanding after consummation of the merger, or (ii) if the corporation is a subsidiary and the merger is governed by Section 79-4-11.05;

(2) Consummation of a share exchange to which the corporation is a party as the corporation whose shares will be acquired if the shareholder is entitled to vote on the exchange, except that appraisal rights shall not be available to any shareholder of the corporation with respect to any class or series of shares of the corporation that is not exchanged;

(3) Consummation of a disposition of assets pursuant to Section 79-4-12.02 if the shareholder is entitled to vote on the disposition;

(4) An amendment of the articles of incorporation with respect to a class or series of shares that reduces the number of shares of a class or series owned by the shareholder to a fraction of a share if the corporation has the obligation or right to repurchase the fractional share so created; or

(5) Any other amendment to the articles of incorporation, merger, share exchange or disposition of assets to the extent provided by the articles of incorporation, bylaws or a resolution of the board of directors.

(b) Notwithstanding subsection (a), the availability of appraisal rights under subsection (a)(1), (2), (3) and (4) shall be limited in accordance with the following provisions:

(1) Appraisal rights shall not be available to any shareholder of the constituent corporations in a corporate reorganization transaction otherwise covered by subsection (a)(1) or (2) if: (i) the shareholders of an existing corporation exchange shares of such corporation for shares of a newly formed corporation and receive, after the reorganization, the same proportionate share interest in the new corporation and the rights and interests of the shareholders in the newly formed corporation are substantially the same as those in the existing corporation prior to the transaction; (ii) the newly formed corporation has no significant assets other than the shares of the existing corporation; (iii) after the reorganization the newly formed corpo-

ration and its subsidiaries have substantially the same assets and liabilities, on a consolidated basis, as those of the existing corporation prior to the transaction; (iv) fractional shares are neither created nor eliminated as a result of the transaction; (v) the existing corporation and the newly formed corporation are the only constituent corporations to such reorganization; (vi) the existing corporation and the newly formed corporation are corporations of this state; (vii) the directors of the existing corporation become the directors of the newly formed corporation upon the effective time of the corporate reorganization; (viii) the existing corporation becomes a direct wholly-owned subsidiary of the newly formed corporation; and (ix) the shareholders of the existing corporation do not recognize gain or loss for United States federal income tax purposes as determined by the board of directors of the existing corporation.

(2) Appraisal rights shall not be available for the holders of shares of any class or series of shares which is:

(i) Listed on the New York Stock Exchange or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc.; or

(ii) Not so listed or designated, but has at least two thousand (2,000) shareholders and the outstanding shares of such class or series has a market value of at least Twenty Million Dollars (\$20,000,000.00) (exclusive of the value of such shares held by its subsidiaries, senior executives, directors and beneficial shareholders owning more than ten percent (10%) of such shares).

(3) The applicability of subsection (b)(2) shall be determined as of:

(i) The record date fixed to determine the shareholders entitled to receive notice of, and to vote at, the meeting of shareholders to act upon the corporate action requiring appraisal rights; or

(ii) The day before the effective date of such corporate action if there is no meeting of shareholders.

(4) Subsection (b)(2) shall not be applicable and appraisal rights shall be available pursuant to subsection (a) for the holders of any class or series of shares who are required by the terms of the corporate action requiring appraisal rights to accept for such shares anything other than cash or shares of any class or any series of shares of any corporation, or any other proprietary interest of any other entity, that satisfies the standards set forth in subsection (b)(2) at the time the corporate action becomes effective.

(5) Subsection (b)(2) shall not be applicable and appraisal rights shall be available pursuant to subsection (a) for the holders of any class or series of shares where the corporate action is an interested transaction.

(c) Notwithstanding any other provision of this section, the articles of incorporation as originally filed or any amendment thereto may limit or eliminate appraisal rights for any class or series of preferred shares, but any such limitation or elimination contained in an amendment to the articles of incorporation that limits or eliminates appraisal rights for any of such shares that are outstanding immediately prior to the effective date of such amend-



ment or that the corporation is or may be required to issue or sell thereafter pursuant to any conversion, exchange or to other right existing immediately before the effective date of such amendment shall not apply to any corporate action that becomes effective within one (1) year of that date if such action would otherwise afford appraisal rights.

**[From and after January 1, 2015, this section shall read as follows:]**

(a) A shareholder is entitled to appraisal rights, and to obtain payment of the fair value of that shareholder's shares, in the event of any of the following corporate actions:

(1) Consummation of a merger to which the corporation is a party (i) if shareholder approval is required for the merger by Section 79-4-11.04 and the shareholder is entitled to vote on the merger, except that appraisal rights shall not be available to any shareholder of the corporation with respect to shares of any class or series that remain outstanding after consummation of the merger, or (ii) if the corporation is a subsidiary and the merger is governed by Section 79-4-11.05;

(2) Consummation of a share exchange to which the corporation is a party as the corporation whose shares will be acquired if the shareholder is entitled to vote on the exchange, except that appraisal rights shall not be available to any shareholder of the corporation with respect to any class or series of shares of the corporation that is not exchanged;

(3) Consummation of a disposition of assets pursuant to Section 79-4-12.02 if the shareholder is entitled to vote on the disposition;

(4) An amendment of the articles of incorporation with respect to a class or series of shares that reduces the number of shares of a class or series owned by the shareholder to a fraction of a share if the corporation has the obligation or right to repurchase the fractional share so created;

(5) Any other amendment to the articles of incorporation, merger, share exchange or disposition of assets to the extent provided by the articles of incorporation, bylaws or a resolution of the board of directors;

(6) Consummation of a domestication if the shareholder does not receive shares in the foreign corporation resulting from the domestication that have terms as favorable to the shareholder in all material respects, and represent at least the same percentage interest of the total voting rights of the outstanding shares of the corporation, as the shares held by the shareholder before the domestication; or

(7) Consummation of a conversion of the corporation to a different form of entity under the Mississippi Entity Conversion and Domestication Act.

(b) Notwithstanding subsection (a), the availability of appraisal rights under subsection (a)(1), (2), (3), (4) and (6) shall be limited in accordance with the following provisions:

(1) Appraisal rights shall not be available to any shareholder of the constituent corporations in a corporate reorganization transaction otherwise covered by subsection (a)(1) or (2) if: (i) the shareholders of an existing corporation exchange shares of such corporation for shares of a newly formed

corporation and receive, after the reorganization, the same proportionate share interest in the new corporation and the rights and interests of the shareholders in the newly formed corporation are substantially the same as those in the existing corporation prior to the transaction; (ii) the newly formed corporation has no significant assets other than the shares of the existing corporation; (iii) after the reorganization the newly formed corporation and its subsidiaries have substantially the same assets and liabilities, on a consolidated basis, as those of the existing corporation prior to the transaction; (iv) fractional shares are neither created nor eliminated as a result of the transaction; (v) the existing corporation and the newly formed corporation are the only constituent corporations to such reorganization; (vi) the existing corporation and the newly formed corporation are corporations of this state; (vii) the directors of the existing corporation become the directors of the newly formed corporation upon the effective time of the corporate reorganization; (viii) the existing corporation becomes a direct wholly owned subsidiary of the newly formed corporation; and (ix) the shareholders of the existing corporation do not recognize gain or loss for United States federal income tax purposes as determined by the board of directors of the existing corporation.

(2) Appraisal rights shall not be available for the holders of shares of any class or series of shares which is:

(i) Listed on the New York Stock Exchange or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc.; or

(ii) Not so listed or designated, but has at least two thousand (2,000) shareholders and the outstanding shares of such class or series has a market value of at least Twenty Million Dollars (\$20,000,000.00) (exclusive of the value of such shares held by its subsidiaries, senior executives, directors and beneficial shareholders owning more than ten percent (10%) of such shares).

(3) The applicability of subsection (b)(2) shall be determined as of:

(i) The record date fixed to determine the shareholders entitled to receive notice of, and to vote at, the meeting of shareholders to act upon the corporate action requiring appraisal rights; or

(ii) The day before the effective date of such corporate action if there is no meeting of shareholders.

(4) Subsection (b)(2) shall not be applicable and appraisal rights shall be available pursuant to subsection (a) for the holders of any class or series of shares who are required by the terms of the corporate action requiring appraisal rights to accept for such shares anything other than cash or shares of any class or any series of shares of any corporation, or any other proprietary interest of any other entity, that satisfies the standards set forth in subsection (b)(2) at the time the corporate action becomes effective.

(5) Subsection (b)(2) shall not be applicable and appraisal rights shall be available pursuant to subsection (a) for the holders of any class or series of shares where the corporate action is an interested transaction.

(c) Notwithstanding any other provision of this section, the articles of incorporation as originally filed or any amendment thereto may limit or eliminate appraisal rights for any class or series of preferred shares, but any such limitation or elimination contained in an amendment to the articles of incorporation that limits or eliminates appraisal rights for any of such shares that are outstanding immediately prior to the effective date of such amendment or that the corporation is or may be required to issue or sell thereafter pursuant to any conversion, exchange or to other right existing immediately before the effective date of such amendment shall not apply to any corporate action that becomes effective within one (1) year of that date if such action would otherwise afford appraisal rights.

**SOURCES:** Laws, 1987, ch. 486, § 13.02; Laws, 1990, ch. 411, § 7; Laws, 2000, ch. 469, § 29; Laws, 2001, ch. 435, § 14; Laws, 2007, ch. 361, § 9; Laws, 2014, ch. 399, § 36, eff from and after Jan. 1, 2015.

**Amendment Notes** — The 2014 amendment, in the second version, deleted “or” following “fractional share so created” at the end of (a)(4) and “or the American Stock Exchange” following “New York Stock Exchange” at the beginning of (b)(2)(i); inserted (a)(6) and (a)(7); substituted a comma for “and” and inserted “and (6)” in (b); and made minor punctuation changes.

## CHAPTER 11

### Nonprofit, Nonshare Corporations and Religious Societies

Mississippi Nonprofit Corporation Act ..... 79-11-101

#### MISSISSIPPI NONPROFIT CORPORATION ACT

SEC.	
79-11-109.	Filing fees; fee for serving process upon Secretary of State; fees for copying and certifying copy of filed document.
79-11-159.	Reserving exclusive use of corporate name; transferring reserved corporate name.
79-11-161.	Repealed.

#### **§ 79-11-109. Filing fees; fee for serving process upon Secretary of State; fees for copying and certifying copy of filed document.**

(1) Except as otherwise provided in subsection (4) of this section, the Secretary of State shall collect the following fees when the documents described in this subsection are delivered for filing:

Document	Fee
(a) Articles of incorporation .....	\$50.00
(b) [Reserved]	
(c) Application for reserved name .....	25.00
(d) Notice of transfer or cancellation of reserved name .....	25.00



(e) [Reserved]	
(f) [Reserved]	
(g) [Reserved]	
(h) [Reserved]	
(i) [Reserved]	
(j) Amendment of articles of incorporation .....	50.00
(k) Restatement of articles of incorporation with amendments ..	50.00
(l) Articles of merger .....	50.00
(m) Articles of dissolution .....	25.00
(n) Articles of revocation of dissolution .....	25.00
(o) Certificate of administrative dissolution .....	No Fee
(p) Application for reinstatement following administrative dissolution .....	50.00
(q) Certificate of reinstatement .....	No Fee
(r) Certificate of judicial dissolution .....	No Fee
(s) Application for certificate of authority .....	100.00
(t) Application for amended certificate of authority .....	50.00
(u) Application for certificate of withdrawal .....	25.00
(v) Certificate of revocation of authority to transact business .....	No Fee
(w) Status report .....	25.00
(x) Articles of correction .....	50.00
(y) Application for certificate of existence or authorization .....	25.00
(z) Any other document required or permitted to be filed by Section 79-11-101 et seq .....	25.00

(2) Except as otherwise provided in subsection (4) of this section, the Secretary of State shall collect a fee of Twenty-five Dollars (\$25.00) upon being served with process under Section 79-11-101 et seq. The party to a proceeding causing service of process is entitled to recover the fee paid the Secretary of State as costs if the party prevails in the proceeding.

(3) Except as otherwise provided in subsection (4) of this section, the Secretary of State shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

- One Dollar (\$1.00) a page for copying; and
- Ten Dollars (\$10.00) for the certificate.

(4) The Secretary of State may collect a filing fee greater than the fee set forth in subsections (1), (2) and (3) in an amount not to exceed twice the fee set forth in subsections (1), (2) and (3) of processing the filing, if the form prescribed by the Secretary of State for such filing has not been used.

**SOURCES:** Laws, 1987, ch. 485, § 5; Laws, 1988, ch. 417, § 1; Laws, 1995, ch. 323, § 1; Laws, 2012, ch. 382, § 52; Laws, 2014, ch. 468, § 6, eff from and after July 1, 2014.

**Amendment Notes** — The 2014 amendment, in (1)(b), substituted “[Reserved]” for “Application for use of indistinguishable name ... 25.00”; in (1)(e), substituted “[Reserved]” for “Application for registered name ... 50.00”; and in (1)(f), substituted “[Reserved]” for “Application for renewal of registered name ... 50.00.”

### § 79-11-159. Reserving exclusive use of corporate name; transferring reserved corporate name.

(1) A person may reserve the exclusive use of a legal corporate name that complies with Section 79-11-157, including a fictitious name for a foreign corporation whose corporate name is not available, by delivering an application to the Secretary of State for filing. Upon finding that the corporate name applied for is available, the Secretary of State shall reserve the name for the applicant's exclusive use for a period of one hundred eighty (180) days. The one-hundred-eighty-day period may be renewed once by the applicant by filing a renewal application within thirty (30) days before the expiration of the initial one-hundred-eighty-day period.

(2) The owner of a reserved corporate name may transfer the reservation to another person by delivering to the Secretary of State a signed notice of the transfer that states the name and address of the transferee.

**SOURCES:** Laws, 1987, ch. 485, § 30; Laws, 2014, ch. 468, § 2, eff from and after July 1, 2014.

**Amendment Notes** — The 2014 amendment, in (1), inserted “legal” following “the exclusive use of a” and “that complies with Section 79-11-157” following “corporate name” in the first sentence; deleted “nonrenewable” following “applicant’s exclusive use for” near the end of the second sentence; added the last sentence; and in (2), inserted “to” following “another person by delivering.”

### § 79-11-161. Repealed.

Repealed by Laws 2014, ch. 468, § 10, effective from and after July 1, 2014.

§ 79-11-161. [Laws, 1987, ch. 485, § 31, eff from and after January 1, 1988.]

**Editor’s Note** — Former § 79-11-161 provided for the registration of a foreign corporation’s corporate name.

## CHAPTER 13

### Uniform Partnership Act (1997)

Article 1.	General Provisions .....	79-13-101
Article 4.	Relations of Partners to Each Other and to Partnership .....	79-13-401
Article 5.	Transferees and Creditors of Partner .....	79-13-501
Article 9.	Conversions and Mergers .....	79-13-901

#### ARTICLE 1.

#### GENERAL PROVISIONS.

SEC.

79-13-101. Definitions.

**§ 79-13-101. Definitions.**

**[Until January 1, 2015, this section shall read as follows:]**

In this chapter:

- (1) "Business" includes every trade, occupation, and profession.
- (2) "Debtor in bankruptcy" means a person who is the subject of:
  - (i) An order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or
  - (ii) A comparable order under federal, state, or foreign law governing insolvency.
- (3) "Distribution" means a transfer of money or other property from a partnership to a partner in the partner's capacity as a partner or to the partner's transferee.
- (4) "Foreign limited liability partnership" means a partnership that:
  - (i) Is formed under laws other than the laws of this state; and
  - (ii) Has the status of a limited liability partnership under those laws.
- (5) "Limited liability partnership" means a partnership that has filed a statement of qualification under Section 79-13-1001 and does not have a similar statement in effect in any other jurisdiction.
- (6) "Partnership" means an association of two (2) or more persons to carry on as co-owners a business for profit formed under Section 79-13-202, predecessor law, or comparable law of another jurisdiction.
- (7) "Partnership agreement" means the agreement, whether written, oral, or implied, among the partners concerning the partnership, including amendments to the partnership agreement.
- (8) "Partnership at will" means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.
- (9) "Partnership interest" or "partner's interest in the partnership" means all of a partner's interests in the partnership, including the partner's transferable interest and all management and other rights.
- (10) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
- (11) "Property" means all property, real, personal, or mixed, tangible or intangible, or any interest therein.
- (12) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.
- (13) "Statement" means a statement of partnership authority under Section 79-13-303, a statement of denial under Section 79-13-304, a statement of dissociation under Section 79-13-704, a statement of dissolution under Section 79-13-805, a statement of merger under Section 79-13-907, a statement of qualification under Section 79-13-1001, a statement of foreign qualification under Section 79-13-1102, or an amendment or cancellation of any of the foregoing.



(14) “Transfer” includes an assignment, conveyance, lease, mortgage, deed, and encumbrance.

**[From and after January 1, 2015, this section shall read as follows:]**

In this chapter:

(1) “Business” includes every trade, occupation, and profession.

(2) “Debtor in bankruptcy” means a person who is the subject of:

(i) An order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

(ii) A comparable order under federal, state, or foreign law governing insolvency.

(3) “Distribution” means a transfer of money or other property from a partnership to a partner in the partner’s capacity as a partner or to the partner’s transferee.

(4) “Domestic partnership” means a partnership whose internal relations are governed by the laws of this state.

(5) “Foreign limited liability partnership” means a partnership that:

(i) Is formed under laws other than the laws of this state; and

(ii) Has the status of a limited liability partnership under those laws.

(6) “Foreign partnership” means a partnership other than a domestic partnership.

(7) “Limited liability partnership” or “domestic limited liability partnership” means a partnership that has filed a statement of qualification under Section 79-13-1001 and does not have a similar statement in effect in any other jurisdiction.

(8) “Partnership” means an association of two (2) or more persons to carry on as co-owners a business for profit formed under Section 79-13-202, predecessor law, or comparable law of another jurisdiction.

(9) “Partnership agreement” means the agreement, whether written, oral, or implied, among the partners concerning the partnership, including amendments to the partnership agreement.

(10) “Partnership at will” means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

(11) “Partnership interest” or “partner’s interest in the partnership” means all of a partner’s interests in the partnership, including the partner’s transferable interest and all management and other rights.

(12) “Person” means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(13) “Property” means all property, real, personal, or mixed, tangible or intangible, or any interest therein.

(14) “State” means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

(15) “Statement” means a statement of partnership authority under Section 79-13-303, a statement of denial under Section 79-13-304, a statement of dissociation under Section 79-13-704, a statement of dissolution under Section 79-13-805, a statement of merger under Section 79-13-907, a statement of qualification under Section 79-13-1001, a statement of foreign qualification under Section 79-13-1102, or an amendment or cancellation of any of the foregoing.

(16) “Surviving partnership” means a domestic or foreign partnership into which one or more domestic or foreign partnerships are merged. A surviving partnership may preexist the merger or be created by the merger.

(17) “Transfer” includes an assignment, conveyance, lease, mortgage, deed, and encumbrance.

**SOURCES:** Laws, 2004, ch. 458, § 101; Laws, 2014, ch. 399, § 37, eff from and after Jan. 1, 2015.

**Amendment Notes** — The 2014 amendment, in the second version, added (4), (6), and (16) and redesignated remaining subsections accordingly; inserted “or ‘domestic limited liability partnership’” to present (7).

#### ARTICLE 4.

##### RELATIONS OF PARTNERS TO EACH OTHER AND TO PARTNERSHIP.

SEC.

79-13-401. Partner’s rights and duties.

### § 79-13-401. Partner’s rights and duties.

**[Until January 1, 2015, this section shall read as follows:]**

(a) Each partner is deemed to have an account that is:

(1) Credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner’s share of the partnership profits; and

(2) Charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner’s share of the partnership losses.

(b) Each partner is entitled to an equal share of the partnership profits and is chargeable with a share of the partnership losses in proportion to the partner’s share of the profits.

(c) A partnership shall reimburse a partner for payments made and indemnify a partner for liabilities incurred by the partner in the ordinary course of the business of the partnership or for the preservation of its business or property.

(d) A partnership shall reimburse a partner for an advance to the partnership beyond the amount of capital the partner agreed to contribute.

(e) A payment or advance made by a partner which gives rise to a partnership obligation under subsection (c) or (d) constitutes a loan to the partnership which accrues interest from the date of the payment or advance.

(f) Each partner has equal rights in the management and conduct of the partnership business.

(g) A partner may use or possess partnership property only on behalf of the partnership.

(h) A partner is not entitled to remuneration for services performed for the partnership, except for reasonable compensation for services rendered in winding up the business of the partnership.

(i) A person may become a partner only with the consent of all of the partners.

(j) A difference arising as to a matter in the ordinary course of business of a partnership may be decided by a majority of the partners. An act outside the ordinary course of business of a partnership and an amendment to the partnership agreement may be undertaken only with the consent of all of the partners.

(k) This section does not affect the obligations of a partnership to other persons under Section 79-13-301.

**[From and after January 1, 2015, this section shall read as follows:]**

(a) Each partner is deemed to have an account that is:

(1) Credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner's share of the partnership profits; and

(2) Charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner's share of the partnership losses.

(b) Each partner is entitled to an equal share of the partnership profits and is chargeable with a share of the partnership losses in proportion to the partner's share of the profits.

(c) A partnership shall reimburse a partner for payments made and indemnify a partner for liabilities incurred by the partner in the ordinary course of the business of the partnership or for the preservation of its business or property.

(d) A partnership shall reimburse a partner for an advance to the partnership beyond the amount of capital the partner agreed to contribute.

(e) A payment or advance made by a partner which gives rise to a partnership obligation under subsection (c) or (d) constitutes a loan to the partnership which accrues interest from the date of the payment or advance.

(f) Each partner has equal rights in the management and conduct of the partnership business.

(g) A partner may use or possess partnership property only on behalf of the partnership.

(h) A partner is not entitled to remuneration for services performed for the partnership, except for reasonable compensation for services rendered in winding up the business of the partnership.

(i) Except as provided in Article 9 of this chapter or the Mississippi Entity Conversion and Domestication Act, a person may become a partner only with the consent of all of the partners.



(j) A difference arising as to a matter in the ordinary course of business of a partnership may be decided by a majority of the partners. An act outside the ordinary course of business of a partnership and an amendment to the partnership agreement may be undertaken only with the consent of all of the partners.

(k) This section does not affect the obligations of a partnership to other persons under Section 79-13-301.

**SOURCES:** Laws, 2004, ch. 458, § 401; Laws, 2014, ch. 399, § 38, eff from and after Jan. 1, 2015.

**Amendment Notes** — The 2014 amendment, in the second version, inserted the exception at the beginning of (i).

## ARTICLE 5.

### TRANSFEREES AND CREDITORS OF PARTNER.

SEC.

79-13-502. Partner's transferable interest in partnership.

## § 79-13-502. Partner's transferable interest in partnership.

**[Until January 1, 2015, this section shall read as follows:]**

The only transferable interest of a partner in the partnership is the partner's share of the profits and losses of the partnership and the partner's right to receive distributions. The interest is personal property.

**[From and after January 1, 2015, this section shall read as follows:]**

Except as provided in Article 9 of this chapter or the Mississippi Entity Conversion and Domestication Act, the only transferable interest of a partner in the partnership is the partner's share of the profits and losses of the partnership and the partner's right to receive distributions. The interest of a partner, whether or not transferable, is personal property.

**SOURCES:** Laws, 2004, ch. 458, § 502; Laws, 2014, ch. 399, § 39, eff from and after Jan. 1, 2015.

**Amendment Notes** — The 2014 amendment, in the second version, inserted the exception to the first sentence and "of a partner, whether or not transferable," in the middle of the last sentence.

## ARTICLE 9.

### CONVERSIONS AND MERGERS.

SEC.

79-13-902. Conversion of partnership to limited partnership [Repealed effective January 1, 2015].

79-13-903. Reserved [Repealed effective January 1, 2015]

79-13-904. Effect of conversion; entity unchanged [Repealed effective January 1, 2015].

79-13-908. Nonexclusive.

### **§ 79-13-902. Conversion of partnership to limited partnership [Repealed effective January 1, 2015].**

(a) A partnership may be converted to a limited partnership pursuant to this section.

(b) The terms and conditions of a conversion of a partnership to a limited partnership must be approved by all of the partners or by a number or percentage specified for conversion in the partnership agreement.

(c) After the conversion is approved by the partners, the partnership shall file a certificate of limited partnership in the jurisdiction in which the limited partnership is to be formed containing the information required to be contained in a certificate of limited partnership in such jurisdiction and additionally including:

(1) A statement that the partnership was converted to a limited partnership from a partnership;

(2) Its former name; and

(3) A statement of the number of votes cast by the partners for and against the conversion and, if the vote is less than unanimous, the number or percentage required to approve the conversion under the partnership agreement.

(d) The conversion takes effect when the certificate of limited partnership is filed or at any later date specified in the certificate.

(e) A general partner who becomes a limited partner as a result of the conversion remains liable as a general partner for an obligation incurred by the partnership before the conversion takes effect. If the other party to a transaction with the limited partnership reasonably believes when entering the transaction that the limited partner is a general partner, the limited partner is liable for an obligation incurred by the limited partnership within ninety (90) days after the conversion takes effect. The limited partner's liability for all other obligations of the limited partnership incurred after the conversion takes effect is that of a limited partner as provided in the Mississippi Limited Partnership Act.

**SOURCES:** Laws, 2004, ch. 458, § 902, eff from and after Jan. 1, 2005.

**Editor's Note** — Laws, 2014, ch. 399, § 48, effective January 1, 2015, provides:

“SECTION 48. Section 79-13-902, Mississippi Code of 1972, which provides for conversion of a partnership to a limited partnership, is repealed.”

### **§ 79-13-903. Reserved [Repealed effective January 1, 2015].**

**Editor's Note** — Laws, 2014, ch. 399, § 49, effective January 1, 2015, provides:

“SECTION 49. Section 79-13-903, Mississippi Code of 1972, which is reserved for future enactment, is repealed.”

§ 79-13-904. Effect of conversion; entity unchanged [Repealed effective January 1, 2015].

- (a) A partnership that has been converted pursuant to this article is for all purposes the same entity that existed before the conversion.
- (b) When a conversion takes effect:
  - (1) All property owned by the converting partnership remains vested in the converted entity;
  - (2) All obligations of the converting partnership continue as obligations of the converted entity; and
  - (3) An action or proceeding pending against the converting partnership may be continued as if the conversion had not occurred.
- (c) Except for the provisions of Section 79-13-902 and this section, from and after the effective date of conversion the converted limited partnership shall be governed by the provisions of the Mississippi Limited Partnership Act.

SOURCES: Laws, 2004, ch. 458, § 904, eff from and after Jan. 1, 2005.

Editor’s Note — Laws, 2014, ch. 399, § 50, effective January 1, 2015, provides: “SECTION 50. Section 79-13-904, Mississippi Code of 1972, which provides for the effect of a conversion, is repealed.”

§ 79-13-908. Nonexclusive.

[Until January 1, 2015, this section shall read as follows:]

This article is not exclusive. Partnerships may be converted or merged in any other manner provided by law.

[From and after January 1, 2015, this section shall read as follows:]

This article is not exclusive. Partnerships may be converted or merged in any other manner provided or permitted by law.

SOURCES: Laws, 2004, ch. 458, § 908; Laws, 2014, ch. 399, § 40, eff from and after Jan. 1, 2015.

Amendment Notes — The 2014 amendment, in the second version, inserted “or permitted” in the last sentence.

CHAPTER 14

Mississippi Limited Partnership Act

Article 1.	General Provisions .....	79-14-101
Article 2.	Formation: Certificate of Limited Partnership .....	79-14-201
Article 7.	Assignment of Partnership Interests .....	79-14-701
Article 11.	Miscellaneous .....	79-14-1101



## ARTICLE 1.

## GENERAL PROVISIONS.

SEC.

- 79-14-101. Definitions.  
79-14-103. Reservation of name.  
79-14-105. Records to be kept.

**§ 79-14-101. Definitions.**

**[Until January 1, 2015, this section shall read as follows:]**

As used in this chapter, unless the context otherwise requires:

(1) "Certificate of limited partnership" means the certificate referred to in Section 79-14-201, and the certificate as amended or restated.

(2) "Contribution" means any cash, property, services rendered, or a promissory note or other obligation to contribute cash or property or to perform services, which a partner contributes to a limited partnership in his capacity as a partner.

(3) "Deliver" or "delivery" means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery, and electronic transmission. If delivery is to the Secretary of State, delivery may be made by electronic transmission if, to the extent, and in the manner permitted by the Secretary of State.

(4) "Electronic transmission" or "electronically transmitted" means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of information by the recipient.

(5) "Entity" means any association or legal entity organized to conduct business, including, without limitation, limited partnerships, for profit and nonprofit corporations, general partnerships, limited liability partnerships, limited liability companies, joint ventures, joint stock companies and business trusts.

(6) "Event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner as provided in Section 79-14-402.

(7) "Foreign limited partnership" means a partnership formed under the laws of another state or under the laws of a foreign country or foreign jurisdiction and having as partners one or more general partners and one or more limited partners (or their equivalence under any name).

(8) "General partner" means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement or the provisions of this chapter and named in the certificate of limited partnership as a general partner.

(9) "Limited partner" means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement.

(10) "Limited partnership" and "domestic limited partnership" mean a partnership formed by two (2) or more persons under the laws of this state and having one or more general partners and one or more limited partners.

(11) "Organizational documents" means the basic document or documents that create or determine the internal governance of an entity.

(12) "Partner" means a limited or general partner.

(13) "Partnership agreement" means any valid agreement, written or oral, of the partners as to the affairs of a limited partnership and the conduct of its business.

(14) "Partnership interest" means a partner's share of the profits and losses of a limited partnership and the right to receive distributions of limited partnership assets.

(15) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited partnership, association, joint venture, government, governmental subdivision or agency, any other legal or commercial entity, nominee or any individual or entity in any representative capacity.

(16) "Sign" or "signature" includes any manual, facsimile, conformed or electronic signature.

(17) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

**[From and after January 1, 2015, this section shall read as follows:]**

As used in this chapter, unless the context otherwise requires:

(1) "Certificate of limited partnership" means the certificate referred to in Section 79-14-201, and the certificate as amended or restated.

(2) "Contribution" means any cash, property, services rendered, or a promissory note or other obligation to contribute cash or property or to perform services, which a partner contributes to a limited partnership in his capacity as a partner.

(3) "Deliver" or "delivery" means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery, and electronic transmission. If delivery is to the Secretary of State, delivery may be made by electronic transmission if, to the extent, and in the manner permitted by the Secretary of State.

(4) "Electronic transmission" or "electronically transmitted" means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of information by the recipient.

(5) "Entity" means any association or legal entity organized to conduct business, including, without limitation, limited partnerships, for-profit and nonprofit corporations, general partnerships, limited liability partnerships, limited liability companies, joint ventures, joint-stock companies and business trusts.

(6) "Event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner as provided in Section 79-14-402.

(7) “Foreign limited partnership” means a partnership formed under the laws of another state or under the laws of a foreign country or foreign jurisdiction and having as partners one or more general partners and one or more limited partners (or their equivalence under any name).

(8) “General partner” means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement or the provisions of this chapter and named in the certificate of limited partnership as a general partner.

(9) “Limited partner” means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement.

(10) “Limited partnership” and “domestic limited partnership” mean a partnership formed by two (2) or more persons under the laws of this state and having one or more general partners and one or more limited partners. The terms include a limited liability limited partnership.

(11) “Organizational documents” means the basic document or documents that create or determine the internal governance of an entity.

(12) “Partner” means a limited or general partner.

(13) “Partnership agreement” means any valid agreement, written or oral, of the partners as to the affairs of a limited partnership and the conduct of its business.

(14) “Partnership interest” means a partner’s share of the profits and losses of a limited partnership and the right to receive distributions of limited partnership assets.

(15) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited partnership, association, joint venture, government, governmental subdivision or agency, any other legal or commercial entity, nominee or any individual or entity in any representative capacity.

(16) “Sign” or “signature” includes any manual, facsimile, conformed or electronic signature.

(17) “State” means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

**SOURCES:** Laws, 1987, ch. 488, § 101; Laws, 1997, ch. 418, § 12; Laws, 2000, ch. 469, § 40; Laws, 2014, ch. 399, § 41, eff from and after Jan. 1, 2015.

**Amendment Notes** — The 2014 amendment, in the second version, inserted hyphens in between the words “for profit” and “joint stock” in (5) and added last sentence to (10).

### **§ 79-14-103. Reservation of name.**

(a) The right to the use of a legal name that complies with Section 79-14-102 may be reserved by:

(1) A person intending to organize a limited partnership under this chapter and to adopt that name;

(2) A domestic limited partnership or any foreign limited partnership registered in this state which, in either case, intends to adopt that name;



(3) A foreign limited partnership intending to register in this state and adopt that name; and

(4) A person intending to organize a foreign limited partnership and intending to have it registered in this state and adopt that name.

(b) The reservation shall be made by filing with the Secretary of State an application, signed by the applicant, specifying the name to be reserved and the name and address of the applicant. If the Secretary of State finds that the name is available for use as a legal name by a domestic or foreign limited partnership, the Secretary of State shall reserve the name for the exclusive use of the applicant as a legal name for a period of one hundred eighty (180) days. The one-hundred-eighty-day period may be renewed once by the applicant by filing a renewal application within thirty (30) days before the expiration of the initial one-hundred-eighty-day period. The right to the exclusive use of a reserved name may be transferred to any other person by delivering to the Secretary of State a notice of the transfer, signed by the applicant for whom the name was reserved and specifying the name and address of the transferee.

(c) The reservation of a specified name may be cancelled by delivering to the Secretary of State a notice of cancellation, specifying the name reservation to be cancelled and the name and address of the applicant or transferee.

(d) Unless the Secretary of State finds that any application, notice of transfer, or notice of cancellation filed with the Secretary of State as required by this section does not conform to law, upon receipt of all filing fees required by law, the Secretary of State shall prepare and return to the person who filed the instrument a copy of the filed instrument with a notation thereon on the action taken by the Secretary of State.

(e) A fee set forth in Section 79-14-1104 of this chapter shall be paid at the time of the reservation of any name and at the time of the filing of a notice of the transfer or cancellation of any such reservation.

**SOURCES:** Laws, 1987, ch. 488, § 103; Laws, 2014, ch. 468, § 3, eff from and after July 1, 2014.

**Amendment Notes** — The 2014 amendment, in (a) substituted “The right to the use of a legal name that complies with Section 79-14-102” for “The exclusive right to the use of a name”; in (b), substituted “signed” for “executed” and “specifying the name to be reserved and the name and address of the applicant” for “to reserve a specified name” in the first sentence, substituted “the Secretary of State” for “he” and inserted “as a legal name” twice in the second sentence, substituted the present third sentence for the former third sentence, which read: “Once having so reserved a name, the same applicant may not again reserve the same name until more than sixty (60) days after the expiration of the last 180-day period for which that applicant reserved that name,” and in the last sentence, substituted “delivering to” for “filing in the office of” and “signed” for “executed”; and added (c), (d), and (e).

## § 79-14-105. Records to be kept.

[Until January 1, 2015, this section shall read as follows:]

(a) Each limited partnership shall keep at the office referred to in Section 79-14-104(a)(1) the following:

(1) A current list of the full name and last known business address of each partner separately identifying in alphabetical order the general partners and the limited partners;

(2) A copy of the certificate of limited partnership and all certificates of amendment thereto, together with executed copies of any powers of attorney pursuant to which any certificate has been executed;

(3) Copies of the limited partnership's federal, state and local income tax returns and reports, if any, for the six (6) most recent years;

(4) Copies of any then effective written partnership agreements and of any financial statements of the limited partnership for the six (6) most recent years; and

(5) Unless contained in a written partnership agreement, a writing setting out:

(i) The amount of cash and a description and statement of the agreed value of the other property or services contributed by each partner and which each partner has agreed to contribute;

(ii) The times at which or events on the happening of which any additional contributions agreed to be made by each partner are to be made;

(iii) Any right of a partner to receive, or of a general partner to make, distributions to a partner which include a return of all or any part of the partner's contribution; and

(iv) Any events upon the happening of which the limited partnership is to be dissolved and its affairs wound up.

(b) The records specified under this section are subject to inspection and copying at the reasonable request, and at the expense, of any partner during ordinary business hours.

**[From and after January 1, 2015, this section shall read as follows:]**

(a) Each limited partnership shall keep at the office referred to in Section 79-14-104(a)(1) the following:

(1) A current list of the full name and last-known business address of each partner separately identifying in alphabetical order the general partners and the limited partners;

(2) A copy of the certificate of limited partnership and all certificates of amendment thereto, together with executed copies of any powers of attorney pursuant to which any certificate has been executed;

(3) Copies of the limited partnership's federal, state and local income tax returns and reports, if any, for the six (6) most recent years;

(4) Copies of any then effective written partnership agreements and of any financial statements of the limited partnership for the six (6) most recent years;

(5) A copy of any statement of conversion or domestication filed under the Mississippi Entity Conversion and Domestication Act; and

(6) Unless contained in a written partnership agreement, a writing setting out:

(i) The amount of cash and a description and statement of the agreed value of the other property or services contributed by each partner and which each partner has agreed to contribute;

(ii) The times at which or events on the happening of which any additional contributions agreed to be made by each partner are to be made;

(iii) Any right of a partner to receive, or of a general partner to make, distributions to a partner which include a return of all or any part of the partner's contribution; and

(iv) Any events upon the happening of which the limited partnership is to be dissolved and its affairs wound up.

(b) The records specified under this section are subject to inspection and copying at the reasonable request, and at the expense, of any partner during ordinary business hours.

**SOURCES:** Laws, 1987, ch. 488, § 105; Laws, 2014, ch. 399, § 42, eff from and after Jan. 1, 2015.

**Amendment Notes** — The 2014 amendment, in the second version, inserted a hyphen in between the words “last known” in (a)(1); deleted “and” following “six (6) most recent years;” at the end of (4); added (5) and redesignated remaining subsections accordingly.

## ARTICLE 2.

### FORMATION: CERTIFICATE OF LIMITED PARTNERSHIP.

SEC.

79-14-201. Certificate of limited partnership.

79-14-202. Amendment to certificate.

79-14-204. Execution of certificate.

## § 79-14-201. Certificate of limited partnership.

**[Until January 1, 2015, this section shall read as follows:]**

(a) In order to form a limited partnership, a certificate of limited partnership must be signed and delivered to the office of the Secretary of State for filing. The certificate must set forth:

(1) The name of the limited partnership;

(2) The information required by Section 79-35-5(a);

(3) The name and the street and mailing address of each general partner;

(4) The latest date upon which the limited partnership is to dissolve; and

(5) Any other matters the general partners determine to include therein.

(b) A limited partnership is formed at the date and time of the filing of the certificate of limited partnership in the office of the Secretary of State, as



evidenced by such means as the Secretary of State may use for the purpose of recording the date and time of filing, or at any later time specified in the certificate of limited partnership if, in either case, there has been substantial compliance with the requirements of this section.

(c) For all purposes, a copy of the certificate of limited partnership duly certified by the Secretary of State is conclusive evidence of the formation of a limited partnership and prima facie evidence of its existence.

**[From and after January 1, 2015, this section shall read as follows:]**

(a) In order to form a limited partnership, a certificate of limited partnership must be signed and delivered to the Office of the Secretary of State for filing. The certificate must set forth:

- (1) The name of the limited partnership;
- (2) The information required by Section 79-35-5(a);
- (3) The name and the street and mailing address of each general partner;
- (4) The latest date upon which the limited partnership is to dissolve; and
- (5) Any other matters the general partners determine to include therein.

(b) A limited partnership is formed at the date and time of the filing of the certificate of limited partnership in the Office of the Secretary of State, as evidenced by such means as the Secretary of State may use for the purpose of recording the date and time of filing, or at any later time specified in the certificate of limited partnership if, in either case, there has been substantial compliance with the requirements of this section.

(c) For all purposes, a copy of the certificate of limited partnership duly certified by the Secretary of State is conclusive evidence of the formation of a limited partnership and prima facie evidence of its existence.

(d) If any provision of a partnership agreement is inconsistent with the statement of conversion or domestication filed under the Mississippi Entity Conversion and Domestication Act:

- (1) The partnership agreement prevails as to partners and transferees; and
- (2) The filed document prevails as to persons, other than partners and transferees, that reasonably rely on the filed record to their detriment.

**SOURCES:** Laws, 1987, ch. 488, § 201; Laws, 1997, ch. 418, § 13; Laws, 2012, ch. 382, § 87; Laws, 2014, ch. 399, § 43, eff from and after Jan. 1, 2015.

**Amendment Notes** — The 2014 amendment, in the second version, added (d).

**§ 79-14-202. Amendment to certificate.**

**[Until January 1, 2015, this section shall read as follows:]**

(a) A certificate of limited partnership is amended by delivery of a certificate of amendment thereto to the office of the Secretary of State for filing. The certificate shall set forth:

- (1) The name of the limited partnership;
- (2) The future effective date of the amendment, which must be a date certain, unless it is effective upon the filing of the certificate of amendment; and
- (3) The amendment to the certificate.

(b) A general partner who becomes aware that any statement in a certificate of limited partnership was false when made or that any arrangements or other facts described have changed, making the certificate inaccurate in any respect, shall promptly amend the certificate, or if appropriate, deliver to the Secretary of State for filing a statement of change of agent pursuant to Section 79-35-8.

(c) Notwithstanding the requirements of subsection (b) of this section, within thirty (30) days after the happening of any of the following events an amendment to a certificate of limited partnership reflecting the occurrence of the event or events shall be delivered to the office of the Secretary of State for filing:

- (1) The admission of a new general partner;
- (2) The withdrawal of a general partner;
- (3) The continuation of the business under Section 79-14-801 after an event of withdrawal of a general partner;
- (4) A change in the name of the limited partnership; or
- (5) A change in the street or mailing address of the office of the limited partnership.

(d) A certificate of limited partnership may be amended at any time for any other proper purpose the general partners may determine.

(e) Except as provided in Section 79-14-402(b), if an amendment to a certificate of limited partnership is delivered to the office of the Secretary of State in compliance with subsection (c) of this section, no person is subject to liability because the amendment was not filed earlier.

**[From and after January 1, 2015, this section shall read as follows:]**

(a) A certificate of limited partnership is amended by delivery of a certificate of amendment thereto to the Office of the Secretary of State for filing. The certificate shall set forth:

- (1) The name of the limited partnership;
- (2) The future effective date of the amendment, which must be a date certain, unless it is effective upon the filing of the certificate of amendment; and
- (3) The amendment to the certificate.

(b) A general partner who becomes aware that any statement in a certificate of limited partnership was false when made or that any arrange-

ments or other facts described have changed, making the certificate inaccurate in any respect, shall promptly amend the certificate, or if appropriate, deliver to the Secretary of State for filing a statement of change of agent pursuant to Section 79-35-8.

(c) Notwithstanding the requirements of subsection (b) of this section, within thirty (30) days after the happening of any of the following events an amendment to a certificate of limited partnership reflecting the occurrence of the event or events shall be delivered to the Office of the Secretary of State for filing:

- (1) The admission of a new general partner;
- (2) The withdrawal of a general partner;
- (3) The continuation of the business under Section 79-14-801 after an event of withdrawal of a general partner;
- (4) A change in the name of the limited partnership; or
- (5) A change in the street or mailing address of the office of the limited partnership.

(d) A certificate of limited partnership may be amended at any time for any other proper purpose the general partners may determine.

(e) Except as provided in Section 79-14-402(b), if an amendment to a certificate of limited partnership is delivered to the Office of the Secretary of State in compliance with subsection (c) of this section, no person is subject to liability because the amendment was not filed earlier.

(f) A certificate of limited partnership may also be amended by filing a statement of conversion or domestication under the Mississippi Entity Conversion and Domestication Act.

**SOURCES:** Laws, 1987, ch. 488, § 202; Laws, 1997, ch. 418, § 14; Laws, 2012, ch. 382, § 88; Laws, 2014, ch. 399, § 44, eff from and after Jan. 1, 2015.

**Amendment Notes** — The 2014 amendment, in the second version, added (f).

## § 79-14-204. Execution of certificate.

**[Until January 1, 2015, this section shall read as follows:]**

(a) Each certificate required by this article to be filed in the office of the Secretary of State must be signed in the following manner:

- (1) An original certificate of limited partnership must be signed by all general partners;
- (2) A certificate of amendment must be signed by at least one (1) general partner and by each other general partner designated in the certificate as a new general partner; and
- (3) Certificates of dissolution and cancellation must be signed by all general partners or, if there is no general partner, by the limited partners conducting the winding up of the limited partnership affairs under Section 79-14-803. A document required or permitted to be filed under this chapter which contains a copy of a signature, however made, is acceptable for filing.



(b) Any person may sign a certificate, a partnership agreement or any amendment to either by an attorney-in-fact, but a power of attorney to sign a certificate relating to the admission of a general partner must specifically describe the admission.

**[From and after January 1, 2015, this section shall read as follows:]**

(a) Each certificate required by this article to be filed in the Office of the Secretary of State must be signed in the following manner:

(1) An original certificate of limited partnership must be signed by all general partners;

(2) A certificate of amendment must be signed by at least one (1) general partner and by each other general partner designated in the certificate as a new general partner; and

(3) Certificates of dissolution and cancellation must be signed by all general partners or, if there is no general partner, by the limited partners conducting the winding up of the limited partnership affairs under Section 79-14-803. A document required or permitted to be filed under this chapter which contains a copy of a signature, however made, is acceptable for filing.

(b) Any person may sign a certificate, a partnership agreement or any amendment to either by an attorney-in-fact, but a power of attorney to sign a certificate relating to the admission of a general partner must specifically describe the admission.

(c) Each record delivered to the Secretary of State for filing pursuant to the Mississippi Entity Conversion and Domestication Act must be signed by each general partner listed in the certificate of limited partnership.

**SOURCES:** Laws, 1987, ch. 488, § 204; Laws, 1994, ch. 417, § 6; Laws, 1995, ch. 362, § 3; Laws, 1997, ch. 418, § 16; Laws, 2014, ch. 399, § 45, eff from and after Jan. 1, 2015.

**Amendment Notes** — The 2014 amendment, in the second version, added (c).

## ARTICLE 7.

### ASSIGNMENT OF PARTNERSHIP INTERESTS.

SEC.

79-14-701. Nature of partnership interest.

## § 79-14-701. Nature of partnership interest.

**[Until January 1, 2015, this section shall read as follows:]**

A partnership interest is personal property. A partner has no interest in specific limited partnership property.

**[From and after January 1, 2015, this section shall read as follows:]**

Except as provided in the Mississippi Entity Conversion and Domestication Act, the only interest of a partner which is transferable is the partner's transferable interest. A partnership interest of a partner, whether or not

transferable, is personal property. A partner has no interest in specific limited partnership property.

**SOURCES:** Laws, 1987, ch. 488, § 701; Laws, 2014, ch. 399, § 46, eff from and after Jan. 1, 2015.

**Amendment Notes** — The 2014 amendment, in the second version, added the first sentence; and in the present second sentence, inserted “of a partner, whether or not transferable.”

## ARTICLE 11.

### MISCELLANEOUS.

SEC.  
79-14-1104. Fees.

### § 79-14-1104. Fees.

Pursuant to this chapter, the Secretary of State shall charge and collect a fee for:

(a) Reservation, Cancellation or Transfer of Partnership	
Name .....	\$25.00
(b) [Reserved]	
(c) [Reserved]	
(d) Filing of Certificate of Limited Partnership .....	50.00
(e) Filing of Amendment to Certificate of Limited Partnership .....	50.00
(f) Filing of Certificate of Dissolution .....	25.00
(g) Filing of Certificate of Cancellation .....	25.00
(h) Filing of Restated Certificate of Limited Partnership or Amended and Restated Certificate of Limited Partnership .....	25.00
(i) Filing of Certificate of Withdrawal .....	25.00
(j) Filing of Application for Registration of Foreign Limited Partnership .....	250.00
(k) Filing of Certificate Correcting Application for Registration of Foreign Limited Partnership .....	50.00
(l) Filing of Certificate of Cancellation of Registration of Foreign Limited Partnership .....	25.00
(m) Certificate of Administrative Dissolution .....	No fee
(n) Filing of Application for Reinstatement Following Administrative Dissolution .....	50.00
(o) Certificate of Revocation of Registration to Transact Business .....	No fee
(p) Filing of Application for Reinstatement Following Administrative Revocation .....	100.00

(q) Any other document required or permitted to be filed by Section 79-14-101 et seq. ....25.00

**SOURCES:** Laws, 1987, ch. 488, § 1104; Laws, 2012, ch. 382, § 99; Laws, 2014, ch. 468, § 7, eff from and after July 1, 2014.

**Amendment Notes** — The 2014 amendment, in (a), deleted “Filing of” preceding “Reservation”; added “Cancellation or Transfer” following “Reservation”; and added (q).

## CHAPTER 19

### Agricultural Cooperative Marketing Associations

SEC.

- 79-19-9. Powers.
- 79-19-13. Articles of association.
- 79-19-15. Amendments to articles of association.
- 79-19-23. Election of officers.
- 79-19-25. Stock, membership certificates, when issued; voting; liability; limitations on transfer and ownership.
- 79-19-55. Filing fees.
- 79-19-65. Applicability of general nonprofit corporation laws to associations organized under this chapter.

#### § 79-19-9. Powers.

Each association incorporated hereunder shall have the following powers:

(a) To engage in any activity in connection with the growing, breeding, marketing, selling, or buying, or utilization of live stock and poultry of every description and the byproducts thereof, or with the marketing, selling, harvesting, preserving, drying, processing, manufacturing, canning, packing, grading, storing, handling, or utilization of any agricultural product produced or delivered to it by its members; or the manufacturing or marketing of the byproducts thereof; or in connection with the purchase, hiring, or use by its members of supplies, machinery, or equipment; or in the financing of any such activities; or in any one or more of the activities specified in this section. The association may also buy, sell and deal in agricultural products of nonmembers to an amount not greater in value than such as are handled by it for its members.

(b) To borrow money and to make advances to members.

(c) To act as the agent or representative of any member or members in any of the above mentioned activities.

(d) To purchase or otherwise acquire, and to hold, own, and exercise all rights of ownership in, and to sell, transfer, or pledge, or guarantee the payment of dividends or interest on, or the retirement or redemption of shares of the capital stock or bonds of any corporation or association engaged in any related activity, or in the warehousing or handling or marketing of any of the products handled by the association.

(e) To establish reserves and to invest the funds thereof in bonds or such other property as may be provided in the bylaws.



(f) To buy, hold, and exercise all privileges of ownership over such real or personal property as may be necessary or convenient for the conducting and operation of any of the business of the association, or incidental thereto.

(g) To do each and every thing necessary, suitable, or proper for the accomplishment of any one (1) of the purposes, or the attainment of any one or more of the objects herein enumerated, or conducive to or expedient for the interest or benefit of the association; and to contract accordingly; and in addition to exercise and possess all powers, rights, and privileges necessary or incidental to the purposes for which the association is organized, or to the activities in which it is engaged; and to do any such thing anywhere.

(h) To sue and be sued, and prosecute and be prosecuted to judgment and suit before any court; to contract and be contracted with.

**SOURCES:** Codes, 1930, § 4103; 1942, § 4498; Laws, 1922, ch. 179; Laws, 1930, ch. 10; Laws, 2014, ch. 507, § 1, eff from and after July 1, 2014.

**Amendment Notes** — The 2014 amendment substituted the present last sentence in (a) for the former last sentence, which read: “No association shall handle the agricultural products of any nonmember, except as necessary and incidental to the handling of the products of members, and in any such case the value of products of nonmembers so handled shall not exceed the value of the products handled by the association for its members”; and inserted “(1)” following “accomplishment of any one” in (g).

## § 79-19-13. Articles of association.

Each association formed under this chapter must prepare and file articles of association, setting forth:

- (a) The name of the association.
- (b) The purposes for which it is formed.
- (c) The place where its principal business will be transacted.
- (d) The term for which it is to exist, if other than perpetual.
- (e) The number of directors thereof, which must not be less than five (5) and may be any number in excess thereof, and the term of office of such directors.

(f) If organized without capital stock, whether the property rights and interest of each member shall be equal or unequal; and if unequal, the articles shall set forth the general rule or rules applicable to all members by which property right and interests, respectively, of each member may and shall be determined and fixed; and provision for the admission of new members who shall be entitled to share in the property of the association with the old members, in accordance with such general rule or rules. This paragraph of the articles of association shall not be altered, amended, or repealed except by the written consent of the vote of three-fourths ( $\frac{3}{4}$ ) of the members.

(g) If organized with capital stock, the amount of such stock and the number of shares into which it is divided and the par value thereof. The capital stock may be divided into preferred and common stock. If so divided

the articles of association must contain a statement of the number of shares of stock to which preference is granted and the number of shares of stock to which no preference is granted and the nature and definite extent of the preference and privileges granted to each.

The articles must be subscribed by the incorporators and acknowledged by one (1) of them before an officer authorized by the laws of this state to take and certify acknowledgments, and shall be filed and recorded in the Office of the Secretary of State.

**SOURCES:** Codes, 1930, § 4105; 1942, § 4500; Laws, 1922, ch. 179; Laws, 1962, ch. 227; Laws, 2014, ch. 507, § 2, eff from and after July 1, 2014.

**Amendment Notes** — The 2014 amendment substituted “if other than perpetual” for “not exceeding ninety-nine (99) years” in (d) and inserted “(1)” following “acknowledged by one” in the undesignated paragraph in (g).

### § 79-19-15. Amendments to articles of association.

(1) Any amendment to the articles of association must first be approved by a vote of not less than two-thirds ( $\frac{2}{3}$ ) of all the members of the board of directors and then adopted by a vote representing a majority of all the members of the association.

(2) However, if a majority of the members are not present at a meeting of the members of the association to a proposed amendment that has been submitted, then those present shall recess the meeting to a time and place certain, but not sooner than three (3) weeks from the time of recess. Prior to the reconvening of the recessed meeting, notices shall be published each week for three (3) consecutive weeks in a newspaper of general circulation in the place where the principal office of the association is located. These notices shall state the time, place, and purpose of the recessed meeting. When the meeting reconvenes, the members present shall constitute a quorum, and may take action on the proposed amendment by a majority vote of those present, even if members present are fewer than a majority of the total membership of the association.

(3) Amendments to the articles of association when so adopted shall be certified to by the president and secretary of the association and shall be filed with the Secretary of State. Such certification and filing shall be conclusive evidence of the validity of such amendment.

**SOURCES:** Codes, 1930, § 4106; 1942, § 4501; Laws, 1922, ch. 179; Laws, 1964, ch. 261; Laws, 2014, ch. 507, § 3, eff from and after July 1, 2014.

**Amendment Notes** — The 2014 amendment added (2) and redesignated the former undesignated paragraph as present (1) and (3); in (1) deleted the second sentence regarding the submission of proposed amendment to the members for a vote and inserted “and then adopted . . . of the association” at the end.

**§ 79-19-23. Election of officers.**

The directors shall elect from their number a chairman or board president. The directors also shall elect a chief operating officer of the association, one or more vice presidents, a secretary and treasurer, none of whom need be directors or members of the association. The board may combine the two (2) latter offices and designate the combined office as secretary-treasurer. The treasurer may be a bank or any depository, and as such shall not be considered as an officer but as a function of the board of directors. In such case the secretary shall perform the usual accounting duties of the treasurer, excepting that the funds shall be deposited only as authorized by the board of directors.

**SOURCES:** Codes, 1930, § 4110; 1942, § 4505; Laws, 1922, ch. 179; Laws, 2014, ch. 507, § 4, eff from and after July 1, 2014.

**Amendment Notes** — The 2014 amendment inserted “chairman or board” following “from their number a”, “The directors also shall elect a chief operating officer of the association” preceding “one or more vice presidents”, and “The board” preceding “may combine the two (2)”; deleted “and” preceding “one or more vice presidents”, “They shall also elect” preceding “a secretary and treasurer”, “not” preceding “be directors or members”, and “and they” preceding “may combine the two (2)”; and substituted “none of whom” for “who” in the former first and second sentences.

**§ 79-19-25. Stock, membership certificates, when issued; voting; liability; limitations on transfer and ownership.**

When a member of an association established without capital stock has paid his membership fee, if required, in full he shall receive a certificate of membership.

No association shall issue stock to a member until it has been fully paid for.

Except for debts lawfully contracted between him and the association, no member shall be liable for the debts of the association to an amount exceeding the sum remaining unpaid on his membership fee.

No stockholder of a cooperative association shall own more than one-twentieth ( $\frac{1}{20}$ ) of the common stock of the association or more than one-twentieth ( $\frac{1}{20}$ ) of the preferred stock of the association enjoying voting rights, but any one (1) stockholder may own one-twentieth ( $\frac{1}{20}$ ) of each class; and an association, in its bylaws, may limit the amount of common stock or of preferred stock enjoying voting rights which one (1) member may own to any amount less than one-twentieth ( $\frac{1}{20}$ ) of such stock.

Each share of stock shall entitle the holder thereof to one (1) vote in the management of the association; provided, however, if authorized by the articles of association, classes of preferred stock may be issued without voting rights.

Preferred stock may be redeemable or retirable by the association on such terms and conditions as may be provided for by the articles of association and printed on the face of the certificate.

The bylaws shall prohibit the transfer of the common stock or of preferred stock enjoying voting rights to persons not engaged in the production of the



agricultural products handled by the association, and such restrictions must be printed upon every certificate of stock subject thereto.

The association may at any time, except when the debts of the association exceed fifty percent (50%) of the assets thereof, buy in or purchase its stock at book value thereof as conclusively determined by the board of directors and pay for it in cash within one (1) year thereafter.

**SOURCES:** Codes, 1930, § 4111; 1942, § 4506; Laws, 1922, ch. 179; Laws, 1964, ch. 263; Laws, 2014, ch. 507, § 5, eff from and after July 1, 2014.

**Amendment Notes** — The 2014 amendment inserted “if required” following “has paid his membership fee” in the first undesignated paragraph and made minor punctuation changes.

§ 79-19-55. Filing fees.

For filing articles of association and amendments to the articles, an association organized under this chapter shall pay to the Secretary of State Fifty Dollars (\$50.00).

**SOURCES:** Codes, 1930, § 4126; 1942, § 4521; Laws, 1922, ch. 179; Laws, 1958, ch. 346, § 2, eff July 1, 1958; Laws, 2014, ch. 507, § 6, eff from and after July 1, 2014.

**Amendment Notes** — The 2014 amendment inserted “and amendments to the articles” following “For filing articles of association”, substituted “under this chapter” for “hereunder Twenty Dollars (\$20.00); and for filing an amendment to the articles, Ten Dollars (\$10.00)”, and added “Fifty Dollars (\$50.00)” to the end of the sentence.

§ 79-19-65. Applicability of general nonprofit corporation laws to associations organized under this chapter.

The general nonprofit corporation laws and all powers and rights under those laws apply to the associations organized under this chapter, except where such provisions are in conflict or inconsistent with the express provisions of this chapter.

**SOURCES:** Laws, 2014, ch. 507, § 7, eff from and after July 1, 2014.

CHAPTER 29

Revised Mississippi Limited Liability Company Act

Article 1.	General Provisions .....	79-29-101
Article 12.	Miscellaneous .....	79-29-1201

ARTICLE 1.

GENERAL PROVISIONS.

SEC.	
79-29-111.	Reservation of name.

79-29-123. General standards of conduct and construction and application of certificate of formation and operating agreement; scope, function, and limitations.

### § 79-29-111. Reservation of name.

(1) The right to the use of a legal name under Section 79-29-109 may be reserved by:

(a) A person intending to organize a limited liability company under this chapter and to adopt that name;

(b) A domestic limited liability company or any foreign limited liability company registered in this state which, in either case, intends to adopt that name;

(c) A foreign limited liability company intending to register in this state and adopt that name; and

(d) A person intending to organize a foreign limited liability company and intending to have it registered in this state and adopt that name.

(2) The reservation shall be made by delivering to the Office of the Secretary of State for filing an application, signed by the applicant, specifying the name to be reserved and the name and address of the applicant. If the Secretary of State finds that the name is available for use as a legal name by a domestic or foreign limited liability company, the Secretary of State shall reserve the name for the exclusive use of the applicant as a legal name for a period of one hundred eighty (180) days. The one-hundred-eighty-day period may be renewed once by the applicant by filing a renewal application within thirty (30) days before the expiration of the initial one-hundred-eighty-day period. The right to the exclusive use of a reserved name may be transferred to any other person by delivering to the Office of the Secretary of State a notice of the transfer, signed by the applicant for whom the name was reserved and specifying the name and address of the transferee.

(3) The reservation of a specified name may be cancelled by delivering to the Office of the Secretary of State a notice of cancellation, specifying the name reservation to be cancelled and the name and address of the applicant or transferee.

(4) Unless the Secretary of State finds that any application, notice of transfer, or notice of cancellation filed with the Secretary of State as required by this section does not conform to law, upon receipt of all filing fees required by law the Secretary of State shall prepare and return to the person who filed the instrument a copy of the filed instrument with a notation thereon of the action taken by the Secretary of State.

(5) A fee as set forth in Section 79-29-1203 of this chapter shall be paid at the time of the reservation of any name and at the time of the filing of a notice of the transfer or cancellation of any such reservation.

**SOURCES:** Laws, 2010, ch. 532, § 1; Laws, 2014, ch. 468, § 4, eff from and after July 1, 2014.

**Amendment Notes** — The 2014 amendment, in (2), deleted the former third sentence and added the present third sentence; and in (4), inserted “of State” following “fees required by law the Secretary of.”

**§ 79-29-123. General standards of conduct and construction and application of certificate of formation and operating agreement; scope, function, and limitations.**

**[Until January 1, 2015, this section shall read as follows:]**

(1) An operating agreement must initially be agreed to by all of the members. Except as otherwise provided in subsections (2) and (3) of this section, the certificate of formation or operating agreement governs:

(a) The affairs of a limited liability company, the conduct of its business and the relations of its members among the members as members and between the members and the limited liability company;

(b) The rights, powers and duties under this chapter of a person in the capacity of member, manager, officer or other person who is a party to or is otherwise bound by the operating agreement;

(c) The activities of the limited liability company and the conduct of those activities; and

(d) The means and conditions for amending the operating agreement.

(2) To the extent that: (a) the provisions of the operating agreement are not inconsistent with the certificate of formation, the operating agreement governs the matters described in paragraphs (a) through (d) of subsection (1) of this section; (b) the certificate of formation or operating agreement does not provide for the method by which an operating agreement may be amended, then all of the members must agree to any amendment of an operating agreement, except an amendment that occurs as the result of a merger with a domestic or foreign limited liability company must be approved by a majority of the members; and (c) the certificate of formation or operating agreement does not otherwise provide for a matter described in paragraphs (a) through (d) of subsection (1) of this section, this chapter governs the matter.

(3) Except as provided in this subsection (3), the provisions of this chapter that relate to the matters described in paragraphs (a) through (d) of subsection (1) of this section may be waived, restricted, limited, eliminated or varied by the certificate of formation or operating agreement. In addition to the restrictions set forth in subsections (4) and (5) of this section, the certificate of formation or the operating agreement may not:

(a) Vary the requirement set forth in subsection (1) of this section that the initial operating agreement must be agreed to by all of the members;

(b) Vary a limited liability company's capacity to sue and be sued in its own name;

(c) Vary the law applicable under Section 79-29-119;

(d) Vary the power of the court under Section 79-29-209;

(e) Restrict the right to approve a merger under Section 79-29-223(e) to a member who will have personal liability with respect to a survivor;



(f) Restrict the right to approve an asset sale agreement under Section 79-29-233(e) to a member who will have personal liability with respect to any entity;

(g) Eliminate the implied contractual covenant of good faith and fair dealing of a member, manager, officer or other person who is a party to the operating agreement or who is otherwise bound by the operating agreement;

(h) Unreasonably restrict the duties and rights stated in Section 79-29-315;

(i) Waive the requirement of Section 79-29-503(1) that a contribution obligation be in writing;

(j) Vary the requirement to wind-up a limited liability company's business following the filing of a certificate of dissolution as specified in Section 79-29-801;

(k) Vary the manner of the distribution of assets in connection with the winding-up of a limited liability company's business as required by Section 79-29-813(1)(a);

(l) Vary the power of a court to decree dissolution in the circumstances specified in Section 79-29-803(1) or to appoint trustees or receivers as specified in Section 79-29-815;

(m) Vary the requirements of Sections 79-29-817 and 79-29-819;

(n) Vary or modify any provision of Article 9 of this chapter unless otherwise expressly provided in Article 9 that the certificate of formation or the operating agreement may vary or modify such provision;

(o) Unreasonably restrict the right of a member to maintain an action under Article 11 of this chapter;

(p) Vary any requirement set forth in this chapter that an agreement must be contained in either the certificate of formation or a written operating agreement to be enforceable; or

(q) Vary any provision set forth in this chapter relating to filing, fees or any action with or by the Secretary of State's office.

(4) The certificate of formation or an operating agreement may provide for the limitation or elimination of any and all liabilities of any manager, member, officer or other person who is a party to or is otherwise bound by the operating agreement for any action taken, or failure to take any action, as a manager or member or other person, including, for breach of contract and for breach of duties, including all or any fiduciary duties, of a member, manager, officer or other person to a limited liability company or to its members or to another member or manager or officer or to another person; provided, that the certificate of formation or an operating agreement may not limit or eliminate liability for:

(a) The amount of a financial benefit by a member or manager to which the member or manager is not entitled;

(b) An intentional infliction of harm on the limited liability company or the members;

(c) An intentional violation of criminal law;

(d) A violation of Section 79-29-611;

(e) The amount of a distribution in violation of Section 79-29-813(1); or

(f) Any act or omission that constitutes a bad faith violation of the implied contractual covenant of good faith and fair dealing.

(5) Indemnification. (a) A limited liability company may, and shall have the power to, indemnify and hold harmless any member, manager, officer or other person from and against any and all claims and demands whatsoever, except a limited liability company and an operating agreement shall not indemnify any member, manager, officer or other person from and against any claims or demands in connection with a proceeding by or in the right of the limited liability company in which the member, manager or other person was:

(a) (i) Found to have engaged in acts or omissions that constitute fraudulent conduct and was adjudged liable for claims based on such conduct; or

(ii) Was found to have engaged in any actions described in subsection (4) of this section and was adjudged liable for claims based on such actions.

(b) A limited liability company shall indemnify a member, manager, officer or other person who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the person was a party because the person is or was a member, manager, officer or agent of the limited liability company against reasonable expenses incurred by the member, manager, officer or agent in connection with the proceeding.

(c) Each such indemnity may continue as to a person who has ceased to have the capacity referred to in subsection (5)(a) of this section and may inure to the benefit of the heirs, beneficiaries and personal representatives of such person.

(6) General standards of conduct. Subject to the certificate of formation or the terms of a written operating agreement or other written agreement, which may expand, eliminate or restrict the following, except as provided in subsection (4)(f) of this section,

(a) A manager:

(i) Shall discharge the duties of a manager;

1. In good faith and with fair dealing;

2. With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

3. In a manner the manager reasonably believes to be in the best interests of the limited liability company.

(ii) Shall not be liable to a limited liability company or to another member or manager or to another person who is a party to or is otherwise bound by an operating agreement for the following:

1. For any action taken as a manager, or any failure to take any action, if such manager performed the duties of such manager in compliance with subsection (6)(a)(i) of this section.

2. For breach of fiduciary duty for the manager's good faith reliance on the provisions of the operating agreement.

(b) An officer:

(i) Shall discharge the duties of an officer;

1. In good faith and with fair dealing;
2. With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
3. In a manner the officer reasonably believes to be in the best interests of the limited liability company.

(ii) Shall not be liable to a limited liability company or to another member or manager or to another person who is a party to or is otherwise bound by an operating agreement for the following:

1. For any action taken as an officer, or any failure to take any action, if such officer performed the duties of such member in compliance with subsection (6)(b)(i) of this section; and

2. For breach of fiduciary duty for the officer's good faith reliance on the provisions of the operating agreement.

(c) A member of a member-managed limited liability company:

(i) Shall discharge the duties of a member of a member-managed limited liability company;

1. In good faith and with fair dealing;

2. With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

3. In a manner the person reasonably believes to be in the best interests of the limited liability company.

(ii) Shall not be liable to a limited liability company or to another member or manager or to another person who is a party to or is otherwise bound by an operating agreement for the following:

1. For any action taken as a member of a member-managed limited liability company, or any failure to take any action, if such member performed the duties of such member in compliance with subsection (6)(c)(i) of this section.

2. For breach of fiduciary duty for the member's good faith reliance on the provisions of the operating agreement.

(d) To the extent that, at law or in equity, a member of a manager-managed limited liability company or other person has duties, including fiduciary duties set forth in this chapter, to a limited liability company or to another member or manager or to another person who is a party to or is otherwise bound by an operating agreement, such member's or other person's fiduciary duties may be expanded, restricted or eliminated by provisions in the certificate of formation or the written operating agreement.

(e) The operating agreement may:

(i) Identify specific categories of activities that do not violate the duty of loyalty;

(ii) Alter or eliminate any other fiduciary duty, including eliminating particular aspects of that duty; and

(iii) If not manifestly unreasonable, prescribe the standards by which to measure the performance of the implied contractual covenant of good faith and fair dealing under Section 79-29-123(3)(g).

(7) Any agreement relating to or governing any event, act, omission, duty, right, power or liability under or pursuant to the following sections of this



chapter must be expressly contained in either the certificate of formation or a written operating agreement in order to be enforceable:

- (a) Section 79-29-123(4);
- (b) Section 79-29-123(6);
- (c) Section 79-29-231;
- (d) Section 79-29-301(6);
- (e) Section 79-29-303;
- (f) Section 79-29-309;
- (g) Section 79-29-313(1);
- (h) Section 79-29-801; and
- (i) Section 79-29-1211.

(8) A court of equity:

(a) May enforce an operating agreement by injunction or by such other relief that the court in its discretion determines to be fair and appropriate in the circumstances or, when the provisions of Section 79-29-803 are applicable, the court may order dissolution of the limited liability company; and

(b) Shall decide any claim under subsection (6)(e)(iii) of this section that such standard is manifestly unreasonable. The court:

(i) Shall make its determination as of the time the challenged term became part of the operating agreement and by considering only circumstances existing at that time; and

(ii) May invalidate the term only if, in light of the purposes and activities of the limited liability company, it is readily apparent that:

- 1. The objective of the term is unreasonable; or
- 2. The term is an unreasonable means to achieve the provision's objective.

**[From and after January 1, 2015, this section shall read as follows:]**

(1) An operating agreement must initially be agreed to by all of the members. Except as otherwise provided in subsections (2) and (3) of this section, the certificate of formation or operating agreement governs:

(a) The affairs of a limited liability company, the conduct of its business and the relations of its members among the members as members and between the members and the limited liability company;

(b) The rights, powers and duties under this chapter of a person in the capacity of member, manager, officer or other person who is a party to or is otherwise bound by the operating agreement;

(c) The activities of the limited liability company and the conduct of those activities; and

(d) The means and conditions for amending the operating agreement.

(2) To the extent that: (a) the provisions of the operating agreement are not inconsistent with the certificate of formation, the operating agreement governs the matters described in paragraphs (a) through (d) of subsection (1) of this section; (b) the certificate of formation or operating agreement does not provide for the method by which an operating agreement may be amended, then all of the members must agree to any amendment of an operating

agreement, except an amendment that occurs as the result of a merger with a domestic or foreign limited liability company must be approved by a majority of the members; and (c) the certificate of formation or operating agreement does not otherwise provide for a matter described in paragraphs (a) through (d) of subsection (1) of this section, this chapter governs the matter.

(3) Except as provided in this subsection (3), the provisions of this chapter that relate to the matters described in paragraphs (a) through (d) of subsection (1) of this section may be waived, restricted, limited, eliminated or varied by the certificate of formation or operating agreement. In addition to the restrictions set forth in subsections (4) and (5) of this section, the certificate of formation or the operating agreement may not:

(a) Vary the requirement set forth in subsection (1) of this section that the initial operating agreement must be agreed to by all of the members;

(b) Vary a limited liability company's capacity to sue and be sued in its own name;

(c) Vary the law applicable under Section 79-29-119;

(d) Vary the power of the court under Section 79-29-209;

(e) Restrict the right to approve a merger under Section 79-29-223(e) to a member who will have personal liability with respect to a survivor;

(f) Restrict the right to approve a conversion under the Mississippi Entity Conversion and Domestication Act of a member that will have personal liability with respect to an entity following the conversion.

(g) Restrict the right to approve an asset sale agreement under Section 79-29-233(e) to a member who will have personal liability with respect to any entity;

(h) Eliminate the implied contractual covenant of good faith and fair dealing of a member, manager, officer or other person who is a party to the operating agreement or who is otherwise bound by the operating agreement;

(i) Unreasonably restrict the duties and rights stated in Section 79-29-315;

(j) Waive the requirement of Section 79-29-503(1) that a contribution obligation be in writing;

(k) Vary the requirement to windup a limited liability company's business following the filing of a certificate of dissolution as specified in Section 79-29-801;

(l) Vary the manner of the distribution of assets in connection with the winding-up of a limited liability company's business as required by Section 79-29-813(1)(a);

(m) Vary the power of a court to decree dissolution in the circumstances specified in Section 79-29-803(1) or to appoint trustees or receivers as specified in Section 79-29-815;

(n) Vary the requirements of Sections 79-29-817 and 79-29-819;

(o) Vary or modify any provision of Article 9 of this chapter unless otherwise expressly provided in Article 9 that the certificate of formation or the operating agreement may vary or modify such provision;

(p) Unreasonably restrict the right of a member to maintain an action under Article 11 of this chapter;

(q) Vary any requirement set forth in this chapter that an agreement must be contained in either the certificate of formation or a written operating agreement to be enforceable; or

(r) Vary any provision set forth in this chapter relating to filing, fees or any action with or by the Secretary of State's office.

(4) The certificate of formation or an operating agreement may provide for the limitation or elimination of any and all liabilities of any manager, member, officer or other person who is a party to or is otherwise bound by the operating agreement for any action taken, or failure to take any action, as a manager or member or other person, including, for breach of contract and for breach of duties, including all or any fiduciary duties, of a member, manager, officer or other person to a limited liability company or to its members or to another member or manager or officer or to another person; provided, that the certificate of formation or an operating agreement may not limit or eliminate liability for:

(a) The amount of a financial benefit by a member or manager to which the member or manager is not entitled;

(b) An intentional infliction of harm on the limited liability company or the members;

(c) An intentional violation of criminal law;

(d) A violation of Section 79-29-611;

(e) The amount of a distribution in violation of Section 79-29-813(1); or

(f) Any act or omission that constitutes a bad faith violation of the implied contractual covenant of good faith and fair dealing.

(5) Indemnification. (a) A limited liability company may, and shall have the power to, indemnify and hold harmless any member, manager, officer or other person from and against any and all claims and demands whatsoever, except a limited liability company and an operating agreement shall not indemnify any member, manager, officer or other person from and against any claims or demands in connection with a proceeding by or in the right of the limited liability company in which the member, manager or other person was:

(i) Found to have engaged in acts or omissions that constitute fraudulent conduct and was adjudged liable for claims based on such conduct; or

(ii) Was found to have engaged in any actions described in subsection (4) of this section and was adjudged liable for claims based on such actions.

(b) A limited liability company shall indemnify a member, manager, officer or other person who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the person was a party because the person is or was a member, manager, officer or agent of the limited liability company against reasonable expenses incurred by the member, manager, officer or agent in connection with the proceeding.

(c) Each such indemnity may continue as to a person who has ceased to have the capacity referred to in subsection (5)(a) of this section and may inure to the benefit of the heirs, beneficiaries and personal representatives of such person.

(6) General standards of conduct. Subject to the certificate of formation or the terms of a written operating agreement or other written agreement, which



may expand, eliminate or restrict the following, except as provided in subsection (4)(f) of this section,

(a) A manager:

(i) Shall discharge the duties of a manager;

1. In good faith and with fair dealing;
2. With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
3. In a manner the manager reasonably believes to be in the best interests of the limited liability company.

(ii) Shall not be liable to a limited liability company or to another member or manager or to another person who is a party to or is otherwise bound by an operating agreement for the following:

1. For any action taken as a manager, or any failure to take any action, if such manager performed the duties of such manager in compliance with subsection (6)(a)(i) of this section.

2. For breach of fiduciary duty for the manager's good-faith reliance on the provisions of the operating agreement.

(b) An officer:

(i) Shall discharge the duties of an officer;

1. In good faith and with fair dealing;
2. With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
3. In a manner the officer reasonably believes to be in the best interests of the limited liability company.

(ii) Shall not be liable to a limited liability company or to another member or manager or to another person who is a party to or is otherwise bound by an operating agreement for the following:

1. For any action taken as an officer, or any failure to take any action, if such officer performed the duties of such member in compliance with subsection (6)(b)(i) of this section; and

2. For breach of fiduciary duty for the officer's good-faith reliance on the provisions of the operating agreement.

(c) A member of a member-managed limited liability company:

(i) Shall discharge the duties of a member of a member-managed limited liability company;

1. In good faith and with fair dealing;
2. With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
3. In a manner the person reasonably believes to be in the best interests of the limited liability company.

(ii) Shall not be liable to a limited liability company or to another member or manager or to another person who is a party to or is otherwise bound by an operating agreement for the following:

1. For any action taken as a member of a member-managed limited liability company, or any failure to take any action, if such member performed the duties of such member in compliance with subsection (6)(c)(i) of this section.

2. For breach of fiduciary duty for the member's good faith reliance on the provisions of the operating agreement.

(d) To the extent that, at law or in equity, a member of a manager-managed limited liability company or other person has duties, including fiduciary duties set forth in this chapter, to a limited liability company or to another member or manager or to another person who is a party to or is otherwise bound by an operating agreement, such member's or other person's fiduciary duties may be expanded, restricted or eliminated by provisions in the certificate of formation or the written operating agreement.

(e) The operating agreement may:

(i) Identify specific categories of activities that do not violate the duty of loyalty;

(ii) Alter or eliminate any other fiduciary duty, including eliminating particular aspects of that duty; and

(iii) If not manifestly unreasonable, prescribe the standards by which to measure the performance of the implied contractual covenant of good faith and fair dealing under Section 79-29-123(3)(g).

(7) Any agreement relating to or governing any event, act, omission, duty, right, power or liability under or pursuant to the following sections of this chapter must be expressly contained in either the certificate of formation or a written operating agreement in order to be enforceable:

(a) Section 79-29-123(4);

(b) Section 79-29-123(6);

(c) Section 79-29-231;

(d) Section 79-29-301(6);

(e) Section 79-29-303;

(f) Section 79-29-309;

(g) Section 79-29-313(1);

(h) Section 79-29-801; and

(i) Section 79-29-1211.

(8) A court of equity:

(a) May enforce an operating agreement by injunction or by such other relief that the court in its discretion determines to be fair and appropriate in the circumstances or, when the provisions of Section 79-29-803 are applicable, the court may order dissolution of the limited liability company; and

(b) Shall decide any claim under subsection (6)(e)(iii) of this section that such standard is manifestly unreasonable.

The court:

(i) Shall make its determination as of the time the challenged term became part of the operating agreement and by considering only circumstances existing at that time; and

(ii) May invalidate the term only if, in light of the purposes and activities of the limited liability company, it is readily apparent that::

1. The objective of the term is unreasonable; or

2. The term is an unreasonable means to achieve the provision's objective.

**SOURCES:** Laws, 2010, ch. 532, § 1; Laws, 2014, ch. 399, § 47, eff from and after Jan. 1, 2015.

**Amendment Notes** — The 2014 amendment, in the second version, added (3)(f) and redesignated remaining subsections accordingly; inserted hyphen in between the words “good faith” in (6)(a)(ii)2. and (6)(b)(ii)2.

## ARTICLE 12.

### MISCELLANEOUS.

SEC.

79-29-1203. Fees [Repealed effective July 1, 2015].

### § 79-29-1203. Fees [Repealed effective July 1, 2015].

(1) No document required to be filed under this chapter shall be effective until the applicable fee required by this section is paid. The following fees shall be paid to and collected by the Secretary of State for the use of the State of Mississippi:

(a) Filing of Reservation of Limited Liability Company Name or Transfer or Cancellation of Reservation, Twenty-five Dollars (\$25.00).

(b) [Reserved]

(c) [Reserved]

(d) Filing of Certificate of Formation, Fifty Dollars (\$50.00).

(e) Filing of Amendment to Certificate of Formation, Fifty Dollars (\$50.00).

(f) Filing of Certificate of Dissolution, Fifty Dollars (\$50.00).

(g) Filing of Application for Registration of Foreign Limited Liability Company, Two Hundred Fifty Dollars (\$250.00) and Ten Dollars (\$10.00) for each day, but not to exceed a total of One Thousand Dollars (\$1,000.00) for each year the foreign limited liability company transacts business in this state without a registration as a foreign limited liability company.

(h) Filing of Certificate of Correction, Fifty Dollars (\$50.00).

(i) Filing of Certificate of Cancellation of Registration of Foreign Limited Liability Company, Fifty Dollars (\$50.00).

(j) Filing of an Annual Report of Domestic Limited Liability Company, (no fee).

(k) Filing of an Annual Report of Foreign Limited Liability Company, to be deposited in the Elections Support Fund created in Section 23-15-5, Two Hundred Fifty Dollars (\$250.00).

(l) Certificate of Administrative Dissolution, (no fee).

(m) Filing of Application for Reinstatement Following Administrative Dissolution, Fifty Dollars (\$50.00).

(n) Certificate of Administrative Revocation of Authority to Transact Business, (no fee).

(o) Filing of Application for Reinstatement Following Administrative Revocation, One Hundred Dollars (\$100.00).



(p) Certificate of Reinstatement Following Administrative Dissolution, (no fee).

(q) Certificate of Reinstatement Following Administrative Revocation of Authority to Transact Business, (no fee).

(r) Filing of Certificate of Revocation of Dissolution, Twenty-five Dollars (\$25.00).

(s) Application for Certificate of Existence or Authorization, Twenty-five Dollars (\$25.00).

(t) Any other document required or permitted to be filed under this chapter, Twenty-five Dollars (\$25.00).

(2) The Secretary of State shall collect a fee of Twenty-five Dollars (\$25.00) each time process is served on the Secretary of State under Section 79-29-101 et seq.

(3) The Secretary of State shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign limited liability company:

(a) One Dollar (\$1.00) a page for copying; and

(b) Ten Dollars (\$10.00) for the certificate.

(4) The Secretary of State may promulgate rules to:

(a) Reduce the filing fees set forth in this section or provide for discounts of fees as set forth in this section to encourage online filing of documents or for other reasons as determined by the Secretary of State; and

(b) Provide for documents to be filed and accepted on an expedited basis upon the request of the applicant. The Secretary of State may promulgate rules to provide for an additional reasonable filing fee to be paid by the applicant and collected by the Secretary of State for the expedited filing services.

(5) This section shall stand repealed on July 1, 2015.

**SOURCES:** Laws, 1994, ch. 402, § 86; Laws, 2010, ch. 532, § 1; Laws, 2012, ch. 368, § 1; Laws, 2012, ch. 382, § 122; Laws, 2014, ch. 468, § 8, eff from and after July 1, 2014.

**Amendment Notes** — The 2014 amendment, in (1)(a), inserted “or Cancellation” following “Company Name or Transfer.”

CHAPTER 37

Mississippi Entity Conversion and Domestication Act

Article 1.	General Provisions .....	79-37-101
Article 2.	Article 2 [Reserved] .....	
Article 3.	Article 3 [Reserved] .....	
Article 4.	Conversion .....	79-37-401
Article 5.	Domestication .....	79-37-501
Article 6.	Miscellaneous Provisions .....	79-37-601

ARTICLE 1.

GENERAL PROVISIONS.

SEC.

- 79-37-101. Short title [Effective January 1, 2015].
- 79-37-102. Definitions [Effective January 1, 2015].
- 79-37-103. Relationship of chapter to other laws [Effective January 1, 2015].
- 79-37-104. Required notice or approval [Effective January 1, 2015].
- 79-37-105. Status of filings [Effective January 1, 2015].
- 79-37-106. Nonexclusivity [Effective January 1, 2015].
- 79-37-107. Reference to external facts [Effective January 1, 2015].
- 79-37-108. Alternative means of approval of transactions [Effective January 1, 2015].
- 79-37-109. Appraisal rights [Effective January 1, 2015].
- 79-37-110. [Reserved]
- 79-37-111. Requirements for documents [Effective January 1, 2015].
- 79-37-112. Filing, service, and copying fees [Effective January 1, 2015].
- 79-37-113. Effective time and date of document [Effective January 1, 2015].
- 79-37-114. Correcting filed document [Effective January 1, 2015].
- 79-37-115. Filing duty of Secretary of State [Effective January 1, 2015].
- 79-37-116. Appeal from refusal to file a document [Effective January 1, 2015].
- 79-37-117. Evidentiary effect of copy of filed document [Effective January 1, 2015].
- 79-37-118. Penalty for signing false document [Effective January 1, 2015].
- 79-37-119. Powers of Secretary of State [Effective January 1, 2015].

**§ 79-37-101. Short title [Effective January 1, 2015].**

This chapter shall be known and may be cited as the Mississippi Entity Conversion and Domestication Act.

**SOURCES:** Laws, 2014, ch. 399, § 1, eff from and after Jan. 1, 2015.

**§ 79-37-102. Definitions [Effective January 1, 2015].**

As used in this chapter, unless the context otherwise requires:

- (1) [Reserved]
- (2) [Reserved]
- (3) “Approve” means, in the case of an entity, for its governors and interest holders to take whatever steps are necessary under the entity’s organic rules, organic law, and other law to:
  - (A) Propose a transaction subject to this chapter;
  - (B) Adopt and approve the terms and conditions of the transaction;
 and
  - (C) Conduct any required proceedings or otherwise obtain any required votes or consents of the governors or interest holders.
- (4) “Conversion” means a transaction authorized by Article 4 of this chapter.
- (5) “Converted entity” means the converting entity as it continues in existence after a conversion.

(6) "Converting entity" means the domestic entity that approves a plan of conversion pursuant to Section 79-37-403 or the foreign entity that approves a conversion pursuant to the law of its jurisdiction of formation.

(7) "Distributional interest" means the right under an unincorporated entity's organic law and organic rules to receive distributions from the entity.

(8) "Domestic," with respect to an entity, means governed as to its internal affairs by the law of this state.

(9) "Domesticated entity" means the domesticating entity as it continues in existence after a domestication.

(10) "Domesticating entity" means the domestic entity that approves a plan of domestication pursuant to Section 79-37-503 or the foreign entity that approves a domestication pursuant to the law of its jurisdiction of formation.

(11) "Domestication" means a transaction authorized by Article 5 of this chapter.

(12) "Entity":

(A) Means:

(i) A business corporation;

(ii) A nonprofit corporation;

(iii) A general partnership, including a limited liability partnership;

(iv) A limited partnership, including a limited liability limited partnership;

(v) A limited liability company;

(vi) [Reserved];

(vii) [Reserved];

(viii) [Reserved];

(ix) A statutory trust, business trust, or common-law business trust;

(x) An agricultural association, including an agricultural co-operative marketing association; or

(xi) Any other person that has:

(I) A legal existence separate from any interest holder of that person; or

(II) The power to acquire an interest in real property in its own name; and

(B) Does not include:

(i) An individual;

(ii) A trust with a predominantly donative purpose or a charitable trust;

(iii) An association or relationship that is not an entity listed in subparagraph (A) and is not a partnership under the rules stated in Section 79-13-202(c) or a similar provision of the law of any other jurisdiction;

(iv) A decedent's estate; or



(v) A government or a governmental subdivision, agency, or instrumentality.

(13) “Filing entity” means an entity whose formation requires the filing of a public organic record. The term does not include a limited liability partnership.

(14) “Foreign,” with respect to an entity, means an entity governed as to its internal affairs by the law of a jurisdiction other than this state.

(15) “Governance interest” means a right under the organic law or organic rules of an unincorporated entity, other than as a governor, agent, assignee, or proxy, to:

(A) Receive or demand access to information concerning, or the books and records of, the entity;

(B) Vote for or consent to the election of the governors of the entity; or

(C) Receive notice of or vote on or consent to an issue involving the internal affairs of the entity.

(16) “Governor” means:

(A) A director of a business corporation;

(B) A director or trustee of a nonprofit corporation;

(C) A general partner of a general partnership;

(D) A general partner of a limited partnership;

(E) A manager of a manager-managed limited liability company;

(F) A member of a member-managed limited liability company;

(G) [Reserved];

(H) [Reserved];

(I) [Reserved];

(J) A trustee of a statutory trust, business trust, or common-law business trust; or

(K) Any other person under whose authority the powers of an entity are exercised and under whose direction the activities and affairs of the entity are managed pursuant to the organic law and organic rules of the entity.

(17) “Interest” means:

(A) A share in a business corporation;

(B) A membership in a nonprofit corporation;

(C) A partnership interest in a general partnership;

(D) A partnership interest in a limited partnership;

(E) A membership interest in a limited liability company;

(F) [Reserved];

(G) [Reserved];

(H) [Reserved];

(I) A beneficial interest in a statutory trust, business trust, or common-law business trust;

(J) A membership in an agricultural association, including an agricultural co-operative marketing association; or

(K) A governance interest or distributional interest in any other type of unincorporated entity.

(18) [Reserved]

(19) "Interest holder" means:

- (A) A shareholder of a business corporation;
- (B) A member of a nonprofit corporation;
- (C) A general partner of a general partnership;
- (D) A general partner of a limited partnership;
- (E) A limited partner of a limited partnership;
- (F) A member of a limited liability company;
- (G) [Reserved];
- (H) [Reserved];
- (I) [Reserved];

(J) A beneficiary or beneficial owner of a statutory trust, business trust, or common-law business trust;

(K) A member of an agricultural association, including an agricultural co-operative marketing association; or

(L) Any other direct holder of an interest.

(20) "Interest holder liability" means:

(A) Personal liability for a liability of an entity that is imposed on a person:

(i) Solely by reason of the status of the person as an interest holder; or

(ii) By the organic rules of the entity which make one or more specified interest holders or categories of interest holders liable in their capacity as interest holders for all or specified liabilities of the entity; or

(B) An obligation of an interest holder under the organic rules of an entity to contribute to the entity.

(21) "Jurisdiction", used to refer to a political entity, means the United States, a state, a foreign country, or a political subdivision of a foreign country.

(22) "Jurisdiction of formation" means the jurisdiction whose law includes the organic law of an entity.

(23) [Reserved]

(24) [Reserved]

(25) "Organic law" means the law of an entity's jurisdiction of formation governing the internal affairs of the entity.

(26) "Organic rules" means the public organic record and private organic rules of an entity.

(27) "Person" means an individual, business corporation, nonprofit corporation, partnership, limited partnership, limited liability company, agricultural association, agricultural co-operative marketing association, statutory trust, business trust, common-law business trust, estate, trust, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(28) "Plan" means a plan of conversion or plan of domestication.

(29) "Plan of conversion" means a plan under Section 79-37-402.

(30) "Plan of domestication" means a plan under Section 79-37-502.

(31) [Reserved]

(32) [Reserved]

(33) "Private organic rules" mean the rules, whether or not in a record, that govern the internal affairs of an entity, are binding on all of its interest holders, and are not part of its public organic record, if any. The term includes:

(A) The bylaws of a business corporation;

(B) The bylaws of a nonprofit corporation;

(C) The partnership agreement of a general partnership;

(D) The partnership agreement of a limited partnership;

(E) The operating agreement of a limited liability company;

(F) [Reserved];

(G) [Reserved];

(H) [Reserved];

(I) The bylaws of an agricultural association, including an agricultural co-operative marketing association; and

(J) The trust instrument of a statutory trust or similar rules of a business trust or common-law business trust.

(34) "Property" means all property, whether real, personal, or mixed or tangible or intangible, or any right or interest therein.

(35) "Protected agreement" means:

(A) A record evidencing indebtedness and any related agreement in effect on January 1, 2015;

(B) An agreement that is binding on an entity on January 1, 2015;

(C) The organic rules of an entity in effect on January 1, 2015; or

(D) An agreement that is binding on any of the governors or interest holders of an entity on January 1, 2015.

(36) "Public organic record" means the record the filing of which by the Secretary of State is required to form an entity and any amendment to or restatement of that record. The term includes:

(A) The articles of incorporation of a business corporation;

(B) The articles of incorporation of a nonprofit corporation;

(C) The certificate of limited partnership of a limited partnership;

(D) The certificate of formation of a limited liability company;

(E) [Reserved];

(F) [Reserved];

(G) The articles of association of an agricultural association, including an agricultural co-operative marketing association; and

(H) The certificate of trust of a statutory trust or similar record of a business trust.

(37) "Record," used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(38) "Registered foreign entity" means a foreign entity that is registered to do business in this state pursuant to a record filed by the Secretary of State.



(39) "Sign" means, with present intent to authenticate or adopt a record:

(A) To execute or adopt a tangible symbol; or

(B) To attach to or logically associate with the record an electronic symbol, sound, or process.

(40) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(41) "Statement of conversion" means a statement under Section 79-37-405.

(42) "Statement of domestication" means a statement under Section 79-37-505.

(43) [Reserved]

(44) [Reserved]

(45) [Reserved]

(46) "Transfer" includes:

(A) An assignment;

(B) A conveyance;

(C) A sale;

(D) A lease;

(E) An encumbrance, including a mortgage or security interest;

(F) A gift; and

(G) A transfer by operation of law.

(47) "Type of entity" means a generic form of entity:

(A) Recognized at common law; or

(B) Formed under an organic law, whether or not some entities formed under that law are subject to provisions of that law that create different categories of the form of entity.

**SOURCES:** Laws, 2014, ch. 399, § 2, eff from and after Jan. 1, 2015.

### **§ 79-37-103. Relationship of chapter to other laws [Effective January 1, 2015].**

(a) Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

(b) This chapter does not authorize an act prohibited by, and does not affect the application or requirements of, law other than this chapter.

(c) A transaction effected under this chapter may not create or impair a right, duty, or obligation of a person under the statutory law of this state relating to a change in control, takeover, business combination, control-share acquisition, or similar transaction involving a domestic converting or domesticating business corporation unless the corporation survives the transaction, the approval of the plan is by a vote of the shareholders or directors which would be sufficient to create or impair the right, duty, or obligation directly under the law.

**SOURCES:** Laws, 2014, ch. 399, § 3, eff from and after Jan. 1, 2015.

**§ 79-37-104. Required notice or approval [Effective January 1, 2015].**

(a) A domestic or foreign entity that is required to give notice to, or obtain the approval of, a governmental agency or officer of this state to be a party to a merger must give the notice or obtain the approval to be a party to a conversion or domestication.

(b) Property held for a charitable purpose under the law of this state by a domestic or foreign entity immediately before a transaction under this chapter becomes effective may not, as a result of the transaction, be diverted from the objects for which it was donated, granted, devised, or otherwise transferred unless, to the extent required by or pursuant to the law of this state concerning cy pres or other law dealing with nondiversion of charitable assets, the entity obtains an appropriate order of the appropriate court specifying the disposition of the property.

**SOURCES:** Laws, 2014, ch. 399, § 4, eff from and after Jan. 1, 2015.

**§ 79-37-105. Status of filings [Effective January 1, 2015].**

A filing under this chapter signed by a domestic entity becomes part of the public organic record of the entity if the entity's organic law provides that similar filings under that law become part of the public organic record of the entity.

**SOURCES:** Laws, 2014, ch. 399, § 5, eff from and after Jan. 1, 2015.

**§ 79-37-106. Nonexclusivity [Effective January 1, 2015].**

The fact that a transaction under this chapter produces a certain result does not preclude the same result from being accomplished in any other manner permitted by law other than this chapter.

**SOURCES:** Laws, 2014, ch. 399, § 6, eff from and after Jan. 1, 2015.

**§ 79-37-107. Reference to external facts [Effective January 1, 2015].**

A plan may refer to facts ascertainable outside the plan if the manner in which the facts will operate upon the plan is specified in the plan. The facts may include the occurrence of an event or a determination or action by a person, whether or not the event, determination, or action is within the control of a party to the transaction.

**SOURCES:** Laws, 2014, ch. 399, § 7, eff from and after Jan. 1, 2015.

**§ 79-37-108. Alternative means of approval of transactions [Effective January 1, 2015].**

Except as otherwise provided in the organic law or organic rules of a domestic entity, approval of a transaction under this chapter by the affirmative vote or consent of all its interest holders satisfies the requirements of this chapter for approval of the transaction.

**SOURCES:** Laws, 2014, ch. 399, § 8, eff from and after Jan. 1, 2015.

**§ 79-37-109. Appraisal rights [Effective January 1, 2015].**

(a) An interest holder of a domestic converting or domesticating entity is entitled to appraisal rights in connection with the transaction if the interest holder would have been entitled to appraisal rights under the entity's organic law in connection with a merger in which the interest of the interest holder was changed, converted, or exchanged unless:

(1) The organic law permits the organic rules to limit the availability of appraisal rights; and

(2) The organic rules provide such a limit or elimination.

(b) An interest holder of a domestic converting or domesticating entity is entitled to contractual appraisal rights in connection with a transaction under this chapter to the extent provided in:

(1) The entity's organic rules;

(2) The plan; or

(3) The case of a business corporation, by action of its governors.

(c) If an interest holder is entitled to contractual appraisal rights under subsection (b) and the entity's organic law does not provide procedures for the conduct of an appraisal rights proceeding, Article 13 of the Mississippi Business Corporation Act applies to the extent practicable or as otherwise provided in the entity's organic rules or the plan.

**SOURCES:** Laws, 2014, ch. 399, § 9, eff from and after Jan. 1, 2015.

**Joint Legislative Committee Note** — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in a statutory reference in (c) by substituting "Article 13 of the Mississippi Business Corporation Act" for "Chapter 13 of the Mississippi Business Corporation Act." The Joint Committee ratified the correction at its July 24, 2014, meeting.

**§ 79-37-110. [Reserved].**

[Reserved for future codification purposes.]

**SOURCES:** Laws, 2014, ch. 399, § 10, eff from and after Jan. 1, 2015.



**§ 79-37-111. Requirements for documents [Effective January 1, 2015].**

(a) To be entitled to filing by the Secretary of State, a document must satisfy the following requirements and the requirements of any other provision of this chapter that adds to or varies these requirements:

(1) This chapter requires or permits filing the document in the Office of the Secretary of State.

(2) The document contains the information required by this chapter and may contain other information.

(3) The document is in a record.

(4) The document is in the English language, but the name of an entity need not be in English if written in English letters or Arabic or Roman numerals.

(5) The document is signed:

(A) By an officer of a domestic or foreign corporation;

(B) By a person authorized by a domestic or foreign entity that is not a corporation; or

(C) If the entity is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(6) The document must state the name and capacity of the person that signed it.

(7) The document must be delivered to the Office of the Secretary of State for filing.

(b) When a document is delivered to the Office of the Secretary of State for filing, the correct filing fee must be paid or provision for payment made in a manner permitted by the Secretary of State.

**SOURCES:** Laws, 2014, ch. 399, § 11, eff from and after Jan. 1, 2015.

**§ 79-37-112. Filing, service, and copying fees [Effective January 1, 2015].**

(a) The Secretary of State shall collect a fee of Twenty-five Dollars (\$25.00) each time process is served on the Secretary of State under this chapter. The party to a proceeding causing service of process may recover this fee as costs if the party prevails in the proceeding.

(b) The Secretary of State shall collect the following fees for copying and certifying the copy of any document filed under this chapter:

(1) One Dollar (\$1.00) a page for copying; and

(2) Ten Dollars (\$10.00) for the certificate.

(c) The Secretary of State shall collect the following fees when the documents described are delivered for filing:

(1) [Reserved]

(2) [Reserved]

(3) [Reserved]

(4) [Reserved]

(5) Statement of conversion .....	\$50.00
(6) Statement of abandonment of conversion .....	\$25.00
(7) Statement of domestication .....	\$50.00
(8) Statement of abandonment of domestication .....	\$25.00

**SOURCES:** Laws, 2014, ch. 399, § 12, eff from and after Jan. 1, 2015.

**§ 79-37-113. Effective time and date of document [Effective January 1, 2015].**

Except as provided in Section 79-37-114, a document accepted for filing is effective:

- (1) At the date and time of filing, as evidenced by the means used by the Secretary of State for recording the date and time of filing;
- (2) At the time specified in the document as its effective time on the date it is filed;
- (3) At a specified delayed effective time and date if permitted by this chapter; or
- (4) If a delayed effective date but no time is specified, at the close of business on the date specified.

**SOURCES:** Laws, 2014, ch. 399, § 13, eff from and after Jan. 1, 2015.

**§ 79-37-114. Correcting filed document [Effective January 1, 2015].**

(a) A domestic or foreign entity may correct a document filed by the Secretary of State within sixty (60) days of the filing if:

- (1) The document contains an inaccuracy;
- (2) The document was defectively signed; or
- (3) The electronic transmission of the document to the Secretary of State was defective.

(b) A document is corrected by filing with the Secretary of State a statement of correction that:

- (1) Describes the document to be corrected and states its filing date or has attached a copy of the document;
- (2) Specifies the inaccuracy or defect to be corrected; and
- (3) Corrects the inaccuracy or defect.

(c) A statement of correction is effective on the effective date of the document it corrects except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, a statement of correction is effective when filed.

**SOURCES:** Laws, 2014, ch. 399, § 14, eff from and after Jan. 1, 2015.

**§ 79-37-115. Filing duty of Secretary of State [Effective January 1, 2015].**

(a) A document delivered to the Office of the Secretary of State for filing that satisfies the requirements of Section 79-37-111 must be filed by the Secretary of State.

(b) The Secretary of State files a document by recording it as filed on the date and time of receipt. After filing a document, the Secretary of State shall deliver to the domestic or foreign entity or its representative a copy of the document with an acknowledgement of the date and time of filing.

(c) If the Secretary of State refuses to file a document, the Secretary of State shall return the document to the domestic or foreign entity or its representative within five (5) days after the document was delivered, together with a brief, written explanation of the reason for the refusal.

(d) The duty of the Secretary of State to file documents under this section is ministerial. The filing or refusal to file a document does not:

- (1) Affect the validity or invalidity of the document in whole or in part;
- (2) Relate to the correctness or incorrectness of information contained in the document; or
- (3) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

**SOURCES:** Laws, 2014, ch. 399, § 15, eff from and after Jan. 1, 2015.

**§ 79-37-116. Appeal from refusal to file a document [Effective January 1, 2015].**

(a) If the Secretary of State refuses to file a document delivered for filing, the domestic or foreign entity that submitted the document for filing may appeal the refusal within thirty (30) days after the return of the document to the chancery court of the county where the entity's principal office is or will be located, or the Chancery Court of the First Judicial District of Hinds County, Mississippi, if the entity does not have a principal office in this state. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the explanation of the Secretary of State for the refusal to file.

(b) The court may summarily order the Secretary of State to file the document or take other action the court considers appropriate.

(c) The court's final decision may be appealed as in other civil proceedings.

**SOURCES:** Laws, 2014, ch. 399, § 16, eff from and after Jan. 1, 2015.

**§ 79-37-117. Evidentiary effect of copy of filed document [Effective January 1, 2015].**

A filed-stamped copy from the Secretary of State conclusively establishes that the original document is on file with the Secretary of State.



**SOURCES:** Laws, 2014, ch. 399, § 17, eff from and after Jan. 1, 2015.

**§ 79-37-118. Penalty for signing false document [Effective January 1, 2015].**

(a) A person commits an offense if he signs a document he knows is false in any material respect with intent that the document be delivered to the Secretary of State for filing.

(b) An offense under this section is a misdemeanor punishable by a fine of not to exceed One Thousand Dollars (\$1,000.00).

**SOURCES:** Laws, 2014, ch. 399, § 18, eff from and after Jan. 1, 2015.

**§ 79-37-119. Powers of Secretary of State [Effective January 1, 2015].**

The Secretary of State has the power reasonably necessary to perform the duties required by this chapter and adopt rules and regulations for enforcement.

**SOURCES:** Laws, 2014, ch. 399, § 19, eff from and after Jan. 1, 2015.

ARTICLE 2.

[RESERVED].

ARTICLE 3.

[RESERVED].

ARTICLE 4.

CONVERSION.

SEC.

- 79-37-401. Conversion authorized [Effective January 1, 2015].
- 79-37-402. Plan of conversion [Effective January 1, 2015].
- 79-37-403. Approval of conversion [Effective January 1, 2015].
- 79-37-404. Amendment or abandonment of plan of conversion [Effective January 1, 2015].
- 79-37-405. Statement of conversion; effective date [Effective January 1, 2015].
- 79-37-406. Effect of conversion [Effective January 1, 2015].

**§ 79-37-401. Conversion authorized [Effective January 1, 2015].**

(a) By complying with this article, a domestic entity may become:

(1) A domestic entity that is a different type of entity; or

(2) A foreign entity that is a different type of entity, if the conversion is authorized by the law of the foreign entity's jurisdiction of formation.

(b) By complying with the provisions of this article applicable to foreign entities, a foreign entity may become a domestic entity that is a different type of entity if the conversion is authorized by the law of the foreign entity's jurisdiction of formation.

(c) If a protected agreement contains a provision that applies to a merger of a domestic entity but does not refer to a conversion, the provision applies to a conversion of the entity as if the conversion were a merger until the provision is amended after January 1, 2015.

**SOURCES:** Laws, 2014, ch. 399, § 20, eff from and after Jan. 1, 2015.

**§ 79-37-402. Plan of conversion [Effective January 1, 2015].**

(a) A domestic entity may convert to a different type of entity under this article by approving a plan of conversion. The plan must be in a record and contain:

- (1) The name and type of entity of the converting entity;
- (2) The name, jurisdiction of formation, and type of entity of the converted entity;
- (3) The manner of converting the interests in the converting entity into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing;
- (4) The proposed public organic record of the converted entity if it will be a filing entity;
- (5) The full text of the private organic rules of the converted entity which are proposed to be in a record;
- (6) The other terms and conditions of the conversion; and
- (7) Any other provision required by the law of this state or the organic rules of the converting entity.

(b) In addition to the requirements of subsection (a), a plan of conversion may contain any other provision not prohibited by law.

**SOURCES:** Laws, 2014, ch. 399, § 21, eff from and after Jan. 1, 2015.

**§ 79-37-403. Approval of conversion [Effective January 1, 2015].**

(a) A plan of conversion is not effective unless it has been approved:

- (1) By a domestic converting entity:
  - (A) In accordance with the requirements, if any, in its organic rules for approval of a conversion;
  - (B) If its organic rules do not provide for approval of a conversion, in accordance with the requirements, if any, in its organic law and organic rules for approval of:
    - (i) In the case of an entity that is not a business corporation, a merger, as if the conversion were a merger;

(ii) In the case of a business corporation, a merger requiring approval by a vote of the interest holders of the business corporation, as if the conversion were that type of merger; or

(C) By all of the interest holders of the entity entitled to vote on or consent to any matter if in the case of any entity that is not a business corporation, neither its organic law nor organic rules provide for approval of a conversion or a merger; and

(2) In a record, by each interest holder of a domestic converting entity which will have interest holder liability for debts, obligations, and other liabilities that arise after the conversion becomes effective, unless, in the case of an entity that is not a business or nonprofit corporation:

(A) The organic rules of the entity provide in a record for the approval of a conversion or a merger in which some or all of its interest holders become subject to interest holder liability by the vote or consent of fewer than all the interest holders; and

(B) The interest holder voted for or consented in a record to that provision of the organic rules or became an interest holder after the adoption of that provision.

(b) A conversion of a foreign converting entity is not effective unless it is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of formation.

**SOURCES:** Laws, 2014, ch. 399, § 22, eff from and after Jan. 1, 2015.

**§ 79-37-404. Amendment or abandonment of plan of conversion [Effective January 1, 2015].**

(a) A plan of conversion of a domestic converting entity may be amended:

(1) In the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

(2) By its governors or interest holders in the manner provided in the plan, but an interest holder that was entitled to vote on or consent to approval of the conversion is entitled to vote on or consent to any amendment of the plan that will change:

(A) The amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by any of the interest holders of the converting entity under the plan;

(B) The public organic record, if any, or private organic rules of the converted entity which will be in effect immediately after the conversion becomes effective, except for changes that do not require approval of the interest holders of the converted entity under its organic law or organic rules; or

(C) Any other terms or conditions of the plan, if the change would adversely affect the interest holder in any material respect.

(b) After a plan of conversion has been approved and before a statement of conversion becomes effective, the plan may be abandoned as provided in the



plan. Unless prohibited by the plan, a domestic converting entity may abandon the plan in the same manner as the plan was approved.

(c) If a plan of conversion is abandoned after a statement of conversion has been delivered to the Secretary of State for filing and before the statement becomes effective, a statement of abandonment, signed by the converting entity, must be delivered to the Secretary of State for filing before the statement of conversion becomes effective. The statement of abandonment takes effect on filing, and the conversion is abandoned and does not become effective. The statement of abandonment must contain:

- (1) The name of the converting entity;
- (2) The date on which the statement of conversion was filed by the Secretary of State; and
- (3) A statement that the conversion has been abandoned in accordance with this section.

**SOURCES:** Laws, 2014, ch. 399, § 23, eff from and after Jan. 1, 2015.

**§ 79-37-405. Statement of conversion; effective date [Effective January 1, 2015].**

(a) A statement of conversion must be signed on behalf of the converting entity and delivered to the Secretary of State for filing.

(b) A statement of conversion must contain:

- (1) The name, jurisdiction of formation, and type of entity of the converting entity;
- (2) The name, jurisdiction of formation, and type of entity of the converted entity;

(3) If the statement of conversion is not to be effective upon filing, the later date and time on which it will become effective, which may not be more than ninety (90) days after the date of filing;

(4) If the converting entity is a domestic entity, a statement that the plan of conversion was approved in accordance with this article or, if the converting entity is a foreign entity, a statement that the conversion was approved by the foreign entity in accordance with the law of its jurisdiction of formation;

(5) If the converted entity is a domestic filing entity, its public organic record, as an attachment;

(6) If the converted entity is a domestic limited liability partnership, its statement of qualification, as an attachment; and

(7) If the converted entity is a foreign entity, a mailing address to which the Secretary of State pursuant to Section 79-37-406(e).

(c) In addition to the requirements of subsection (b), a statement of conversion may contain any other provision not prohibited by law.

(d) If the converted entity is a domestic entity, its public organic record, if any, must satisfy the requirements of the law of this state, except that the public organic record does not need to be signed and may omit any provision that is not required to be included in a restatement of the public organic record.

(e) A plan of conversion that is signed by a domestic converting entity and meets all the requirements of subsection (b) may be delivered to the Secretary of State for filing instead of a statement of conversion and on filing has the same effect. If a plan of conversion is filed as provided in this subsection, references in this chapter to a statement of conversion refer to the plan of conversion filed under this subsection.

(f) A statement of conversion is effective on the date and time of filing or the later date and time specified in the statement of conversion.

(g) If the converted entity is a domestic entity, the conversion is effective when the statement of conversion is effective. If the converted entity is a foreign entity, the conversion is effective on the later of:

- (1) The date and time provided by the organic law of the converted entity; or
- (2) When the statement is effective.

**SOURCES:** Laws, 2014, ch. 399, § 24, eff from and after Jan. 1, 2015.

**§ 79-37-406. Effect of conversion [Effective January 1, 2015].**

(a) When a conversion becomes effective:

(1) The converted entity is:

(A) Organized under and subject to the organic law of the converted entity; and

(B) The same entity without interruption as the converting entity;

(2) All property of the converting entity continues to be vested in the converted entity without transfer, reversion, or impairment;

(3) All debts, obligations, and other liabilities of the converting entity continue as debts, obligations, and other liabilities of the converted entity;

(4) Except as otherwise provided by law or the plan of conversion, all the rights, privileges, immunities, powers, and purposes of the converting entity remain in the converted entity;

(5) The name of the converted entity may be substituted for the name of the converting entity in any pending action or proceeding;

(6) If a converted entity is a filing entity, its public organic record is effective;

(7) If the converted entity is a limited liability partnership, its statement of qualification is effective;

(8) The private organic rules of the converted entity which are to be in a record, if any, approved as part of the plan of conversion are effective; and

(9) The interests in the converting entity are converted, and the interest holders of the converting entity are entitled only to the rights provided to them under the plan of conversion and to any appraisal rights they have under Section 79-37-109 and the converting entity's organic law.

(b) Except as otherwise provided in the organic law or organic rules of the converting entity, the conversion does not give rise to any rights that an interest holder, governor, or third party would have upon a dissolution, liquidation, or winding up of the converting entity.

(c) When a conversion becomes effective, a person that did not have interest holder liability with respect to the converting entity and becomes subject to interest holder liability with respect to a domestic entity as a result of a conversion has interest holder liability only to the extent provided by the organic law of the entity and only for those debts, obligations, and other liabilities that arise after the conversion becomes effective.

(d) When a conversion becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic converting entity with respect to which the person had interest holder liability is subject to the following rules:

(1) The conversion does not discharge any interest holder liability under the organic law of a domestic converting entity to the extent the interest holder liability arose before the conversion became effective.

(2) The person does not have interest holder liability under the organic law of the domestic converting entity for any debt, obligation, or other liability that arises after the conversion becomes effective.

(3) The organic law of the domestic converting entity continues to apply to the release, collection, or discharge of any interest holder liability preserved under paragraph (1) as if the conversion had not occurred.

(4) The person has whatever rights of contribution from any other person as are provided by other law or the organic rules of the domestic converting entity with respect to any interest holder liability preserved under paragraph (1) as if the conversion had not occurred.

(e) When a conversion becomes effective, a foreign entity that is the converted entity may be served with process in this state for the collection and enforcement of any of its debts, obligations, and other liabilities in accordance with applicable law.

(f) If the converting entity is a registered foreign entity, its registration to do business in this state is canceled when the conversion becomes effective.

(g) A conversion does not require the entity to wind up its affairs and does not constitute or cause the dissolution of the entity.

**SOURCES:** Laws, 2014, ch. 399, § 25, eff from and after Jan. 1, 2015.

## ARTICLE 5.

### DOMESTICATION.

SEC.	
79-37-501.	Domestication authorized [Effective January 1, 2015].
79-37-502.	Plan of domestication [Effective January 1, 2015].
79-37-503.	Approval of domestication [Effective January 1, 2015].
79-37-504.	Amendment or abandonment of plan of domestication [Effective January 1, 2015].
79-37-505.	Statement of domestication; effective date [Effective January 1, 2015].
79-37-506.	Effect of domestication [Effective January 1, 2015].



**§ 79-37-501. Domestication authorized [Effective January 1, 2015].**

(a) Except as otherwise provided in this section, by complying with this article, a domestic entity may become a domestic entity of the same type of entity in a foreign jurisdiction if the domestication is authorized by the law of the foreign jurisdiction.

(b) Except as otherwise provided in this section, by complying with the provisions of this article applicable to foreign entities a foreign entity may become a domestic entity of the same type of entity in this state if the domestication is authorized by the law of the foreign entity's jurisdiction of formation.

(c) If a protected agreement contains a provision that applies to a merger of a domestic entity but does not refer to a domestication, the provision applies to a domestication of the entity as if the domestication were a merger until the provision is amended after January 1, 2015.

**SOURCES:** Laws, 2014, ch. 399, § 26, eff from and after Jan. 1, 2015.

**§ 79-37-502. Plan of domestication [Effective January 1, 2015].**

(a) A domestic entity may become a foreign entity in a domestication by approving a plan of domestication. The plan must be in a record and contain:

(1) The name and type of entity of the domesticating entity;

(2) The name and jurisdiction of formation of the domesticated entity;

(3) The manner of converting the interests in the domesticating entity into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing;

(4) The proposed public organic record of the domesticated entity if it is a filing entity;

(5) The full text of the private organic rules of the domesticated entity that are proposed to be in a record;

(6) The other terms and conditions of the domestication; and

(7) Any other provision required by the law of this state or the organic rules of the domesticating entity.

(b) In addition to the requirements of subsection (a), a plan of domestication may contain any other provision not prohibited by law.

**SOURCES:** Laws, 2014, ch. 399, § 27, eff from and after Jan. 1, 2015.

**§ 79-37-503. Approval of domestication [Effective January 1, 2015].**

(a) A plan of domestication is not effective unless it has been approved:

(1) By a domestic domesticating entity:

(A) In accordance with the requirements, if any, in its organic rules for approval of a domestication;

(B) If its organic rules do not provide for approval of a domestication, in accordance with the requirements, if any, in its organic law and organic rules for approval of:

(i) In the case of an entity that is not a business corporation, a merger, as if the domestication were a merger;

(ii) In the case of a business corporation, a merger requiring approval by a vote of the interest holders of the business corporation, as if the domestication were that type merger; or

(C) By all of the interest holders of the entity entitled to vote on or consent to any matter if in the case of an entity that is not a business corporation, neither its organic law nor organic rules provide for approval of a domestication or a merger; and

(2) In a record, by each interest holder of a domestic domesticating entity that will have interest holder liability for debts, obligations, and other liabilities that arise after the domestication becomes effective, unless, in the case of an entity that is not a business corporation or nonprofit corporation:

(A) The organic rules of the entity in a record provide for the approval of a domestication or merger in which some or all of its interest holders become subject to interest holder liability by the vote or consent of fewer than all of the interest holders; and

(B) The interest holder consented in a record to or voted for that provision of the organic rules or became an interest holder after the adoption of that provision.

(b) A domestication of a foreign domesticating entity is not effective unless it is approved in accordance with the law of the foreign entity's jurisdiction of formation.

**SOURCES:** Laws, 2014, ch. 399, § 28, eff from and after Jan. 1, 2015.

## **§ 79-37-504. Amendment or abandonment of plan of domestication [Effective January 1, 2015].**

(a) A plan of domestication of a domestic domesticating entity may be amended:

(1) In the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

(2) By its governors or interest holders in the manner provided in the plan, but an interest holder that was entitled to vote on or consent to approval of the domestication is entitled to vote on or consent to any amendment of the plan that will change:

(A) The amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by any of the interest holders of the domesticating entity under the plan;

(B) The public organic record, if any, or private organic rules of the domesticated entity that will be in effect immediately after the domestication becomes effective, except for changes that do not require approval of

the interest holders of the domesticated entity under its organic law or organic rules; or

(C) Any other terms or conditions of the plan, if the change would adversely affect the interest holder in any material respect.

(b) After a plan of domestication has been approved by a domestic domesticating entity and before a statement of domestication becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic domesticating entity may abandon the plan in the same manner as the plan was approved.

(c) If a plan of domestication is abandoned after a statement of domestication has been delivered to the Secretary of State for filing and before the statement becomes effective, a statement of abandonment, signed by the entity, must be delivered to the Secretary of State for filing before the statement of domestication becomes effective. The statement of abandonment takes effect on filing, and the domestication is abandoned and does not become effective. The statement of abandonment must contain:

- (1) The name of the domesticating entity;
- (2) The date on which the statement of domestication was filed by the Secretary of State; and
- (3) A statement that the domestication has been abandoned in accordance with this section.

**SOURCES:** Laws, 2014, ch. 399, § 29, eff from and after Jan. 1, 2015.

**§ 79-37-505. Statement of domestication; effective date [Effective January 1, 2015].**

(a) A statement of domestication must be signed by the domesticating entity and delivered to the Secretary of State for filing.

(b) A statement of domestication must contain:

- (1) The name, jurisdiction of formation, and type of entity of the domesticating entity;
- (2) The name and jurisdiction of formation of the domesticated entity;
- (3) If the statement of domestication is not to be effective upon filing, the later date and time on which it will become effective, which may not be more than ninety (90) days after the date of filing;
- (4) If the domesticating entity is a domestic entity, a statement that the plan of domestication was approved in accordance with this article or, if the domesticating entity is a foreign entity, a statement that the domestication was approved in accordance with the law of its jurisdiction of formation;
- (5) If the domesticated entity is a domestic filing entity, its public organic record, as an attachment;
- (6) If the domesticated entity is a domestic limited liability partnership, its statement of qualification, as an attachment; and
- (7) If the domesticated entity is a foreign entity that is not a registered foreign entity, a mailing address to which the Secretary of State may send



any process served on the Secretary of State pursuant to Section 79-37-506(e).

(c) In addition to the requirements of subsection (b), a statement of domestication may contain any other provision not prohibited by law.

(d) If the domesticated entity is a domestic entity, its public organic record, if any, must satisfy the requirements of the law of this state, but the public organic record does not need to be signed and may omit any provision that is not required to be included in a restatement of the public organic record.

(e) A plan of domestication that is signed by a domesticating domestic entity and meets all of the requirements of subsection (b) may be delivered to the Secretary of State for filing instead of a statement of domestication and on filing has the same effect. If a plan of domestication is filed as provided in this subsection, references in this chapter to a statement of domestication refer to the plan of domestication filed under this subsection.

(f) A statement of domestication is effective on the date and time of filing or the later date and time specified in the statement of domestication.

(g) A domestication in which the domesticated entity is a domestic entity is effective when the statement of domestication is effective. A domestication in which the domesticated entity is a foreign entity is effective on the later of:

- (1) The date and time provided by the organic law of the domesticated entity; or
- (2) When the statement is effective.

**SOURCES:** Laws, 2014, ch. 399, § 30, eff from and after Jan. 1, 2015.

**§ 79-37-506. Effect of domestication [Effective January 1, 2015].**

(a) When a domestication becomes effective:

(1) The domesticated entity is:

(A) Organized under and subject to the organic law of the domesticated entity; and

(B) The same entity without interruption as the domesticating entity;

(2) All property of the domesticating entity continues to be vested in the domesticated entity without transfer, reversion, or impairment;

(3) All debts, obligations, and other liabilities of the domesticating entity continue as debts, obligations, and other liabilities of the domesticated entity;

(4) Except as otherwise provided by law or the plan of domestication, all of the rights, privileges, immunities, powers, and purposes of the domesticating entity remain in the domesticated entity;

(5) The name of the domesticated entity may be substituted for the name of the domesticating entity in any pending action or proceeding;

(6) If the domesticated entity is a filing entity, its public organic record is effective;

(7) If the domesticated entity is a limited liability partnership, its statement of qualification is effective simultaneously;

(8) The private organic rules of the domesticated entity that are to be in a record, if any, approved as part of the plan of domestication are effective; and

(9) The interests in the domesticating entity are converted to the extent and as approved in connection with the domestication, and the interest holders of the domesticating entity are entitled only to the rights provided to them under the plan of domestication and to any appraisal rights they have under Section 79-37-109 and the domesticating entity's organic law.

(b) Except as otherwise provided in the organic law or organic rules of the domesticating entity, the domestication does not give rise to any rights that an interest holder, governor, or third party would have upon a dissolution, liquidation, or winding up of the domesticating entity.

(c) When a domestication becomes effective, a person that did not have interest holder liability with respect to the domesticating entity and that becomes subject to interest holder liability with respect to a domestic entity as a result of the domestication has interest holder liability only to the extent provided by the organic law of the entity and only for those debts, obligations, and other liabilities that arise after the domestication becomes effective.

(d) When a domestication becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic domesticating entity with respect to which the person had interest holder liability is subject to the following rules:

(1) The domestication does not discharge any interest holder liability under the organic law of a domesticating domestic entity to the extent the interest holder liability arose before the domestication became effective.

(2) A person does not have interest holder liability under the organic law of the domestic domesticating entity for any debt, obligation, or other liability that arises after the domestication becomes effective.

(3) The organic law of a domestic domesticating entity continues to apply to the release, collection, or discharge of any interest holder liability preserved under paragraph (1) as if the domestication had not occurred.

(4) A person has whatever rights of contribution from any other person as are provided by other law or the organic rules of the domestic domesticating entity with respect to any interest holder liability preserved under paragraph (1) as if the domestication had not occurred.

(e) When a domestication becomes effective, a foreign entity that is the domesticated entity may be served with process in this state for the collection and enforcement of any of its debts, obligations, and other liabilities in accordance with applicable law.

(f) If a domesticating entity is a registered foreign entity, the registration to do business in this state of the domesticating entity is canceled when the domestication becomes effective.

(g) A domestication does not require the entity to wind up its affairs and does not constitute or cause the dissolution of the entity.

**SOURCES:** Laws, 2014, ch. 399, § 31, eff from and after Jan. 1, 2015.

ARTICLE 6.

MISCELLANEOUS PROVISIONS.

SEC.

- 79-37-601. Consistency of application [Effective January 1, 2015].  
79-37-602. Relation to Electronic Signatures in Global and National Commerce Act [Effective January 1, 2015].  
79-37-603. Savings clause [Effective January 1, 2015].  
79-37-604. Severability clause [Effective January 1, 2015].

**§ 79-37-601. Consistency of application [Effective January 1, 2015].**

In applying and construing this chapter, consideration must be given to the need to promote consistency of the law with respect to its subject matter among states that enact it.

**SOURCES:** Laws, 2014, ch. 399, § 32, eff from and after Jan. 1, 2015.

**§ 79-37-602. Relation to Electronic Signatures in Global and National Commerce Act [Effective January 1, 2015].**

This chapter modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 USC Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 USC Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 USC Section 7003(b).

**SOURCES:** Laws, 2014, ch. 399, § 33, eff from and after Jan. 1, 2015.

**§ 79-37-603. Savings clause [Effective January 1, 2015].**

This chapter does not affect an action commenced, proceeding brought, or right accrued before January 1, 2015.

**SOURCES:** Laws, 2014, ch. 399, § 34, eff from and after Jan. 1, 2015.

**§ 79-37-604. Severability clause [Effective January 1, 2015].**

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

**SOURCES:** Laws, 2014, ch. 399, § 35, eff from and after Jan. 1, 2015.





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